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# TEXAS REGISTER

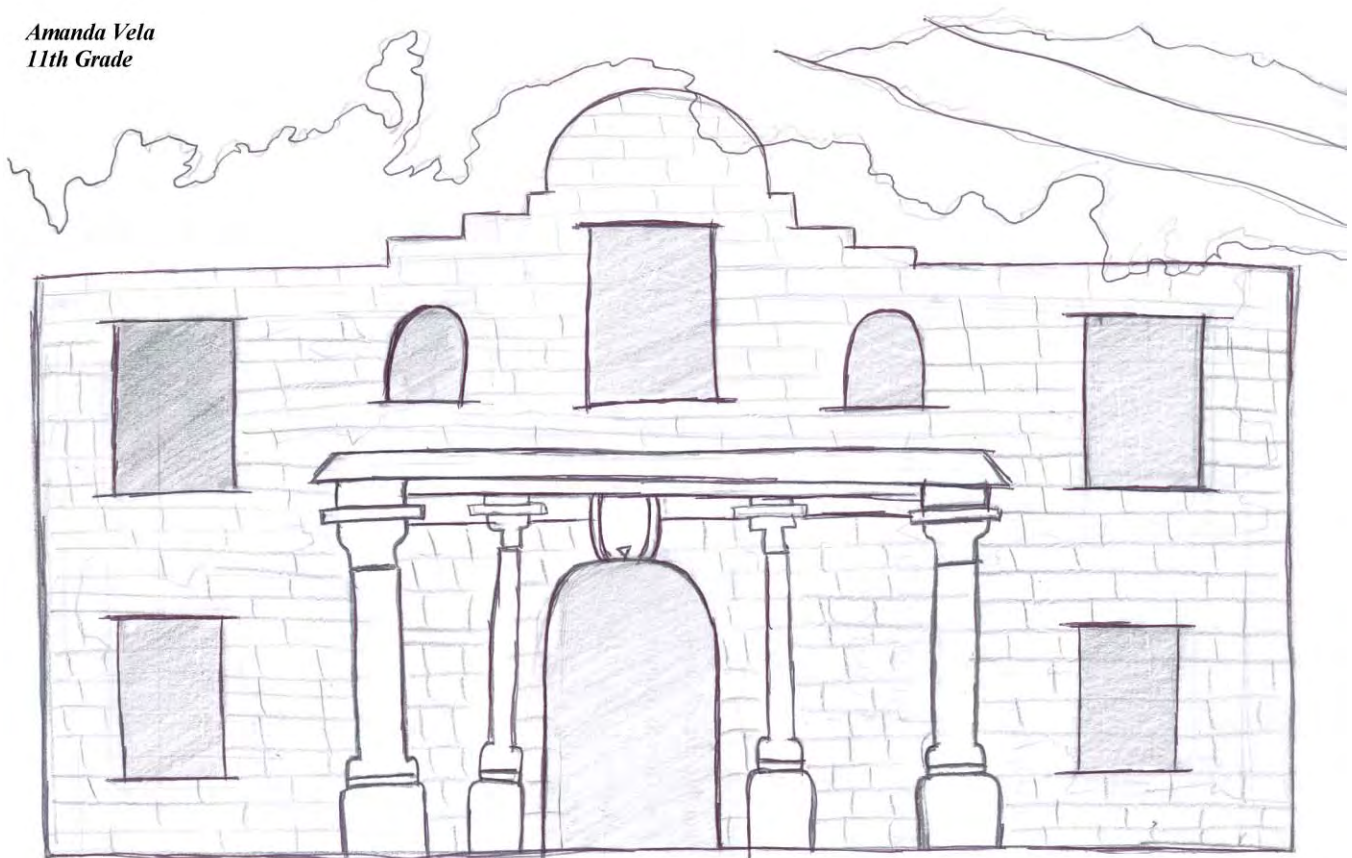
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*Amanda Vela  
11th Grade*



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Office of the Secretary of State  
P.O. Box 12887  
Austin, TX 78711-3824  
(512) 463-5561  
FAX (512) 463-5569

<http://www.sos.state.tx.us>  
[register@sos.state.tx.us](mailto:register@sos.state.tx.us)

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# THE ATTORNEY GENERAL

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Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from  
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

## Requests for Opinions

**RQ-0955-GA**

### Requestor:

The Honorable Rene Guerra

Hidalgo County Criminal District Attorney

Hidalgo County Courthouse

100 North Closner, Room 303

Edinburg, Texas 78539

Re: Appointment process for members of the board of the Hidalgo County Regional Mobility Authority (RQ-0955-GA)

### Briefs requested by April 25, 2011

*For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Opinion Committee at (512) 463-2110.*

TRD-201101229

Jay Dyer

Deputy Attorney General

Office of the Attorney General

Filed: March 29, 2011

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## Opinions

**Opinion No. GA-0849**

The Honorable Harold V. Dutton, Jr.

Chair, Committee on Urban Affairs

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authority of the general manager of a water district to serve as city manager of a home-rule city (RQ-0913-GA)

## SUMMARY

The general manager of a water district does not occupy an office because his actions are subject to control by the water district board. The common-law doctrine of incompatibility does not prohibit the general manager of a water district from serving as a city manager. The city manager of a home-rule city who is appointed by and subject to termination by the city council is not an officer within the common-law doctrine of incompatibility.

*For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Opinion Committee at (512) 463-2110.*

TRD-201101228

Jay Dyer

Deputy Attorney General

Office of the Attorney General

Filed: March 29, 2011

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# TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

## Advisory Opinion Requests

**AOR-561.** The Texas Ethics Commission has been asked to consider whether a person, who is a former candidate for and former holder of a judicial office, may use political contributions to defray expenses incurred in connection with a defamation lawsuit filed by the person against an individual and a political committee in response to statements made in opposition to the person's performance as an officeholder.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15,

Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-201101218

Natalia Luna Ashley

General Counsel

Texas Ethics Commission

Filed: March 28, 2011

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# EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

## TITLE 16. ECONOMIC REGULATION

### PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

#### CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

##### SUBCHAPTER S. WHOLESALE MARKETS

###### 16 TAC §25.507

The Public Utility Commission of Texas (commission) adopts, on an emergency basis, amendments to §25.507, relating to Electric Reliability Council of Texas (ERCOT) Emergency Interruptible Load Service (EILS). The amendments allow ERCOT to establish an additional EILS contract period for the time period of April 1 to May 31, 2011 and give less than the 90 days' notice for this contract period only. These amendments constitute a competition rule subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e).

On February 25, 2011, ERCOT filed its petition for emergency rulemaking to amend §25.507 (the rule). The commission published notice of the petition in the March 11, 2011, issue of the *Texas Register* (36 TexReg 1728) and received comments on the petition from Texas Competitive Power Advocates (TCPA), consisting of Calpine Energy Services, LP, Constellation Energy Commodities Group, Exelon Generation (Power Team), GDF-SUEZ Energy Marketing NA, Inc., Gregory Power Partners, LP, Macquarie Energy, LLC, NextEra Energy Resources, NRG Texas LLC, PSEG TX, LP, Shell Energy North America (US), and Topaz Power Group; Texas Industrial Energy Consumers (TIEC); EnerNOC; and ERCOT.

###### *Petition and Comment Overview*

In its petition, ERCOT stated that EILS is an emergency demand response program that can be deployed in system emergencies. In emergency situations, ERCOT has the discretion through this program to instruct utilities to interrupt firm service to a limited number of customers who have offered to be interrupted for a price, in order to prevent a broader service interruption to firm load customers. EILS resources are deployed by ERCOT in an emergency event prior to or in conjunction with ERCOT instructing utilities to interrupt firm load. Based on subsection (a)(1) of the rule, ERCOT procures EILS during the course of the year for three contract periods: (1) February through May; (2) June through September; and (3) October through January. Under subsection (a)(2), ERCOT may restructure the contract periods to facilitate additional load participation in EILS, but ERCOT must publicly announce any changes to the contract period schedule at least 90 days prior to the next contract period start date. EILS resources are subject to a maximum of two deployments per

EILS contract period, lasting no more than a total of eight hours per contract period, unless an EILS deployment is still in effect when the eighth hour lapses, in which case EILS deployment shall continue until ERCOT releases the EILS resource.

ERCOT stated in its petition that, on February 1, 2011, it began a new contract period covering February 1 - May 31, 2011. On February 2, 2011, in response to cold temperatures and a temporary decrease in available energy supply, ERCOT deployed a total of 467.7 megawatts (MW) of EILS resources. ERCOT did not release the EILS resources until 10:01 a.m. on February 3, 2011, for a total response time for some resources of approximately 28 hours. Because of the deployment restrictions in the rule, beginning the third day of the contract period, ERCOT was no longer permitted to deploy EILS resources for the remaining portion of the contract period. ERCOT stated that it has continuing operational concerns for the remainder of the contract period, and desires to acquire a new supply of EILS capacity as soon as possible. ERCOT requested that the rule be modified on an emergency basis to remove the 90-day notice requirement before changing the contract periods so that ERCOT may create a new contract period for April 1 through May 31, 2011. ERCOT requested a commission decision on its petition no later than the commission's March 24, 2011 Open Meeting in order to allow ERCOT to move forward with procurement of EILS capacity by April 1, 2011.

TCPA understood and supported ERCOT's goal of having tools to maintain grid stability during emergency events, but opposed the complete elimination of the 90-day notice period and requested additional changes to the rule. EnerNOC supported the goal of the petition, but requested a change to the proposed language amending the rule. TIEC opposed the petition, and stated that the performance of EILS resources when deployed on February 2, 2011 should be evaluated before procuring additional resources, that ERCOT's petition does not meet the standard for an emergency rule, and that the proposed rule changes are too broad. ERCOT responded that it seeks only a temporary change to the rule to be effective only for the April to May contract period, that any other proposed changes to the rule should be evaluated through the normal rulemaking process, that it will evaluate the performance of EILS loads when procuring resources for the new contract period, and that the situation does meet the "imminent peril" standard for emergency rulemakings.

###### *Procurement and Utilization of Ancillary Services*

TCPA stated that a focus by ERCOT on increasing competitive procurement of operating reserves at times when a severe weather event is anticipated would not distort market prices. TCPA stated that both EILS deployment and procurement of capacity through the Reliability Unit Commitment process are operator-control mechanisms that drive down market prices when they should reflect scarcity situations, and they should

never be considered prior to enhancing market-driven mechanisms.

#### *Commission Response*

The commission agrees that competitive market mechanisms should be utilized when possible. However, EILS, as described in the rule, is a "special emergency service" and is utilized by ERCOT only in extreme situations to prevent or mitigate the effects of shedding firm load. The procurement and utilization of EILS vis-à-vis the procurement and utilization of other ancillary services is beyond the scope of the rule and this emergency rule-making proceeding.

#### *EILS Performance*

TCPA stated that EILS performance is not yet available for analysis of this product's contribution to the February event, including whether previously-contracted EILS providers will be eligible to contract for the new April through May period. TIEC stated that additional EILS should not be procured until performance from the February 2nd event has been evaluated. TIEC stated that granting the petition could allow ERCOT to procure additional EILS from entities that did not perform and the entities, under subsection (e) of the rule, should be barred from EILS participation for six months. TIEC also stated that entities that failed to perform during the February 2nd event have not reached their deployment limits and should still be subject to a call for interruption without ERCOT having to pay them for additional service. EnerNOC responded to TIEC's statement that "EILS has never been tested" until the February 2, 2011 event by stating that EILS loads have been frequently tested during the four years of the EILS program's existence, and ERCOT evaluates the performance of the EILS loads after each test. EnerNOC stated that the rule does allow for a six-month suspension for loads that fail to perform, but the rule does not specify when the six-month period begins, and it is unrealistic to halt all procurement after each deployment until performance has been evaluated. EnerNOC also expressed confusion at how TIEC reached the conclusion that if a deployed EILS load failed its performance requirements that it has not reached its deployment limit. Finally, EnerNOC stated that the evaluation of the performance of the EILS loads must take into account the extraordinary event that occurred and the exceptionally long period that EILS resources were deployed.

ERCOT responded to comments regarding the evaluation of the February 2 event by stating that it is reviewing the performance of EILS loads and will be in a position to discuss the performance by the March 24, 2011 open meeting. ERCOT stated that EILS loads that failed their availability requirement for the October 2010 through January 2011 and February through May 2011 contract periods, including the February 2-3, 2011 event, as well as EILS loads that experienced dual test failures in the October 2010 through January 2011 contract period will be ineligible for procurement for the requested April 1 through May 31, 2011 contract period. ERCOT will procure EILS capacity from EILS loads that it can "conclusively determine" met their EILS event performance obligations on February 2-3, 2011 in accordance with the rule and ERCOT protocol requirements.

#### *Commission Response*

Subsection (e) of the rule addresses suspension of EILS resources from participation in EILS procurement, and ERCOT's procurement for the emergency April through May 2011 contract period will be subject to that subsection. In addition, ERCOT has addressed TIEC's concern about EILS resource perfor-

mance during the February 2-3, 2011 event by stating that it will be able to consider that performance in determining which EILS resources will be eligible for procurement for the April through May 2011 contract period. There is insufficient time in this emergency rulemaking to evaluate and resolve other comments about the particular performance of EILS resources and their availability for deployment for the remainder of the February through May 2011 contract period and their eligibility for procurement for the emergency contract period. Furthermore, these comments concern implementation issues that can be resolved outside of this proceeding.

#### *Standard for Emergency Rule*

ERCOT stated in its petition that EILS is designed to reduce the need for ERCOT to instruct utilities to shed firm load, or to reduce the amount of firm load that is required to be shed during an emergency event. EILS is procured for all hours and could be needed at any time. ERCOT believed that the deployment of EILS during the February 2, 2011 event most likely mitigated the need to direct utilities to shed additional firm load. Anytime firm load shedding is implemented to maintain the reliability of the ERCOT system, the public health, safety, and welfare of the ERCOT region community is at stake. ERCOT desires to have all operational tools available before reaching that final step. ERCOT also stated that the "shoulder months" of April and May can pose a unique set of operational challenges if extreme weather occurs due to the sizable amount of generation that is historically off-line during these months for planned outages. ERCOT stated that the potential for extreme weather exists in the spring, and ERCOT must be prepared to respond to any extreme weather situation. ERCOT views EILS as a valuable operational tool and ERCOT must have all operational tools readily available for deployment.

TIEC stated that the petition does not meet the standard for an emergency rule. TIEC stated that ERCOT can rely on other operational tools, such as procuring additional ancillary services, to meet any potential threats to grid reliability. Operating temporarily without EILS does not rise to the level of "immediate peril." TIEC stated that ERCOT's claim of "immediate peril" is contradicted by the statement that ERCOT may not procure EILS if the MW offered are not priced reasonably. TIEC also stated that ERCOT seems to be requesting a permanent amendment to the rule, while under the Administrative Procedure Act (APA), an emergency rule is only effective for a limited time - up to 120 days with an extension for no more than 60 days. Finally, TIEC stated that it also does not appear that the commission can modify an existing rule on a temporary basis.

ERCOT responded that it disagrees that the petition does not meet the "imminent peril" standard. EILS is described in the rule as a "special emergency service" and having EILS available during an emergency event supports the notion that it is intended to prevent or minimize the "imminent peril" to public health, safety, and welfare of the ERCOT region community that could result from load shedding events. ERCOT also responded that it is not requesting that the emergency rule be in effect beyond the period to procure EILS capacity for April and May 2011.

#### *Commission Response*

The commission agrees with ERCOT that an "imminent peril to the public health, safety, or welfare" requires adoption at this time of emergency amendments to the rule. As indicated in subsection (a) of the rule, EILS is a special emergency service that is used by ERCOT in an emergency to prevent or reduce involun-



tary blackouts of electric customers. An involuntary blackout of electric customers is a peril to the public health, safety, and welfare. A blackout is a public health peril because the unavailability of electricity can be life threatening to vulnerable populations. A blackout is a public safety peril because the unavailability of electricity to such things as traffic lights can cause accidents. Finally, a blackout is a public welfare peril because the unavailability of electricity can severely disrupt basic, everyday activities of a modern society.

The February 2-3, 2011 event was extreme and involved extremely cold temperatures and a very large amount of resource outages. As a result, ERCOT unexpectedly exhausted its ability to deploy EILS resources near the beginning of the February through May 2011 contract period. In addition, the "shoulder months" of April and May, for which ERCOT seeks an emergency EILS contract period, can pose a unique set of operational challenges for ERCOT if extreme weather occurs. Historically, a sizable amount of generation capacity is unavailable during April and May for planned outages, between the high-load winter period and the high-load summer period. However, unseasonably hot weather can occur during April and May, which will greatly increase the demand for electricity. In April 2006, the ERCOT region experienced 100-plus degree temperatures. Because of the large amount of generation capacity that was unavailable, ERCOT had to direct utilities to shed 1,000 MW of firm load. In fact, the April 2006 event was the impetus for the commission's original adoption of the EILS rule.

An imminent peril to the public health, safety, and welfare exists because ERCOT does not currently have the ability to deploy EILS service during April through May 2011. ERCOT indicated in its petition that it believed that the commission would need to grant its petition no later than the commission's March 24, 2011 open meeting in order to allow ERCOT sufficient time to procure EILS service for the emergency April through May 2011 contract period. ERCOT will need to enter into contracts for that service before April 1, 2011. Therefore, the commission concludes that the emergency rule amendments should take effect as soon as possible, which under APA §2001.036(a)(2) is immediately upon filing of the rule amendments with the secretary of state. APA §2001.036(b) requires that an agency take appropriate measures to make emergency rules known to persons who may be affected by them. To meet this requirement, the commission hereby orders ERCOT to promptly provide notice of the emergency rule amendments adopted herein in the same manner that it provided notice of its petition, which is described in ERCOT's proof of notice filed on February 28, 2011.

APA §2001.003(6)(B) defines "rule" to include the amendment of a prior rule. Thus, APA §2001.034's authorization to adopt an "emergency rule" includes an emergency amendment of a rule. APA §2001.034(c) limits the time period during which an emergency rule can remain in effect. The time period for the emergency amendments to the EILS rule that the commission is adopting is addressed below, in the ERCOT's Proposed Rule Amendments section of this order.

#### *ERCOT's Proposed Rule Amendments*

TCPA stated that the elimination of the 90-day notice requirement is neither a reasonable nor measured response to ERCOT's short-term need. TCPA stated that the 90-day notice requirement was adopted to give ERCOT the flexibility to modify contract periods in the rule while giving potential EILS loads adequate notice to evaluate and prepare for different contract periods. TCPA stated that the trade-off of interests has not

disappeared and the notice period continues to serve the purpose for which it was intended, and requested that ERCOT be granted a one-time, "good-cause" exception to the rule rather than eliminating the notice requirement. EnerNOC agreed that the language in the rule is to protect EILS providers from last-minute contract-period changes, which make it difficult for EILS providers to contract with EILS loads. EnerNOC requested that instead of completely removing the 90-day notice requirement, ERCOT make all reasonable efforts to provide 90 days' notice, unless circumstances make it impractical. This would provide some assurance to EILS providers while the current circumstance would make this notice impractical. EnerNOC responded to TCPA's comments by stating that it is not opposed to granting a good-cause waiver to the rule for ERCOT.

TIEC stated that the proposed amendment is too broad, in that it would allow ERCOT to unilaterally procure additional EILS for any period, rather than be limited to the period covering April 1 to May 31, 2011. TIEC requested rule language that would explicitly establish the new contract period of April 1 to May 31, 2011 and exempt this period only from the 90-day notice requirement. TIEC also requested that the commission grant a good cause waiver to the existing rule, rather than making overly broad changes to the rule. EnerNOC stated that TIEC's proposed language was acceptable.

ERCOT responded to suggestions that it request a good-cause exception by stating that it believed that an emergency rulemaking would provide a much more transparent way to make the case to the market of the need for additional EILS capacity. ERCOT responded to EnerNOC's initial comments by stating that the emergency rule will not be effective any longer than the limited time period to procure capacity for April 1 through May 31, 2011, and that EnerNOC's recommended rule change would be appropriate for consideration during a normal rulemaking. Finally, ERCOT responded to TIEC's requested rule language by stating that the language will accomplish the same end result as sought by ERCOT, and that if the commission prefers TIEC's language, ERCOT believes it will result in the same outcome.

#### *Commission Response*

As discussed above in the Standard for Emergency Rule section of this order, ERCOT's proposed amendments to the rule meet the requirements of the APA for an emergency rule. Therefore, the emergency rule amendments that the commission adopts in this order are an appropriate means of authorizing ERCOT to pursue and possibly implement a special April through May 2011 contract period.

The commission agrees that the language proposed by TIEC more clearly achieves the result intended by ERCOT, by specifically setting out the special contract period and removing the 90-day notice requirement only for that time period. Therefore, the commission concludes that the language proposed by TIEC, with slight modification, should be used to amend the rule on an emergency basis.

#### *Additional Rule Amendments*

TCPA stated that, based on examination of empirical data, there may be additional changes to the rule and the EILS product that would also give ERCOT more flexibility and make the product more useful for system operations. TCPA stated that the Wholesale Market Subcommittee at ERCOT is considering a change to EILS that would allow ERCOT to deploy this tool earlier in an Energy Emergency Alert event. TCPA also stated that a change to subsection (c)(4)(C) to provide for an increase in both the

number of permitted deployments in a contract period and the amount of time each deployment may be in effect, may also merit consideration. TCPA stated that these changes would give ERCOT greater flexibility to address unusual circumstances rather than simply eliminating the 90-day notice requirement in order to acquire additional EILS. ERCOT stated that TCPA's suggested changes to the rule are better suited as part of an overall assessment of the EILS deployment on February 2-3, 2011 and any changes that would more effectively utilize EILS in the future.

#### *Commission Response*

There is insufficient time in this emergency rulemaking proceeding to consider the changes to EILS discussed by TCPA. In addition, the changes are not necessary to address the emergency concerning EILS that ERCOT identified in its petition. Furthermore, making substantial changes to the structure of EILS in an expedited time frame may reduce EILS resource participation in the emergency contract period, which would undermine this order's objective to allow ERCOT to obtain EILS resources for the emergency contract period.

All comments, including any not specifically referred to herein, were fully considered by the commission.

The amendments are adopted, on an emergency basis, under the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §35.004(e), which requires the commission to ensure that ancillary services necessary to facilitate the transmission of electric energy are available at reasonable prices with terms and conditions that are not unreasonably preferential, prejudicial, discriminatory, predatory, or anticompetitive; PURA §39.151, which grants the commission the authority to adopt and enforce rules relating to the reliability of the regional electric network and accounting for the production and delivery of electricity among market participants; provides that an independent organization is directly responsible and accountable to the commission; provides that the commission has complete authority to oversee and investigate the organization's finances, budget, and operations as necessary to ensure the organization's accountability and to ensure that it adequately performs its functions and duties; requires an independent organization to provide reports and information relating to the independent organization's performance of its functions and relating to the organization's revenues, expenses, and other financial matters; and provides that the commission may establish the terms and conditions for the ERCOT independent system operator's authority to oversee utility dispatch functions after the introduction of customer choice; and APA, Texas Government Code §2001.034, which provides for the adoption of an emergency rule.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 35.004(e), and 39.151; and APA §2001.034.

§25.507. *Electric Reliability Council of Texas (ERCOT) Emergency Interruptible Load Service (EILS).*

(a) EILS procurement. ERCOT shall procure EILS, a special emergency service that is intended to be deployed by ERCOT in an Emergency Electric Curtailment Plan (EECP) event prior to or in conjunction with ERCOT instructing transmission and distribution service providers to interrupt firm load.

(1) EILS may be procured for one or more of three contract periods:

- (A) February through May;
- (B) June through September; and
- (C) October through January.

(2) Notwithstanding the foregoing, ERCOT may restructure the contract periods to facilitate additional load participation in EILS. ERCOT must publicly announce any changes to the contract period schedule described above at least 90 days prior to the next contract period start date.

(3) ERCOT may determine cost limits for each EILS contract period in order to ensure that the EILS cost cap is not exceeded. To minimize the cost of EILS, ERCOT may reject any bid that ERCOT determines to be unreasonable or outside of the parameters of an acceptable bid.

(4) ERCOT may contract for any number of MW in an EILS contract period not to exceed 1,000 MW.

(5) ERCOT may establish an additional EILS contract period for the time period of April 1 to May 31, 2011. ERCOT may give less than the 90 days' prior notice required in paragraph (2) of this subsection for this contract period only. This paragraph expires on June 1, 2011.

#### (b) Definitions.

(1) EILS--A special emergency service procured and used by ERCOT in accordance with this section.

(2) EILS contract period--As defined in subsection (a) of this section.

(3) EILS cost cap--The maximum amount ERCOT may spend on the EILS program in a year, February-January. The cost cap is set at \$50 million.

(4) EILS resource--Load that is contracted to provide EILS.

(5) EILS time period--Sets of hours designated by ERCOT within an EILS contract period.

(6) ERCOT--The professional staff of the Electric Reliability Council of Texas, Inc.

(c) Participation in EILS. In addition to requirements established by ERCOT, the following requirements shall apply for the provision of EILS:

(1) EILS bids may be submitted to ERCOT by a qualified scheduling entity (QSE) on behalf of an EILS resource.

(A) Bids may be submitted for one or more time periods within a contract period.

(B) The minimum amount of EILS that may be offered in a bid to ERCOT is one MW. QSEs representing EILS resources may aggregate multiple resources to reach the one MW bid requirement. Such aggregated bids will be considered a single EILS resource.

(2) To qualify to participate in the EILS program, an EILS resource shall meet the technical requirements set out in this paragraph.

(A) Each EILS resource, including each EILS resource participating in an aggregated bid, shall have an ESI ID or unique service identifier, as defined by ERCOT.

(B) Each EILS resource shall have a dedicated installed Interval Data Recorder (IDR) meter or equivalent. If the IDR meter or equivalent is not used for settlement with ERCOT, then the meter and the method and format used to collect and transfer the meter data are

subject to ERCOT approval. This subsection also applies to meters behind a Non-Opt-In Entity (NOIE) meter point, to meters behind a private network's settlement meter point, and to separately metered loads behind a single ESI ID. This requirement shall not apply to customers participating in aggregations of EILS resources if a statistically valid alternative to universal IDR metering for measurement and verification consistent with industry best practices can be developed and approved by ERCOT.

(C) An EILS resource shall be capable of reducing its load by its contracted capacity within ten minutes of an ERCOT verbal dispatch instruction (VDI) to its QSE and shall be capable of maintaining its performance at contracted levels for the entire period of the EILS deployment.

(D) EILS resources, once deployed, shall be able to return to their contracted operating level for providing EILS within ten hours following the recall instruction.

(E) EILS resources shall be subject to qualification, testing, and performance requirements as developed and administered by ERCOT.

(F) An EILS resource shall be registered as part of its QSE agreement with ERCOT.

(G) The QSE shall execute a standard form EILS agreement as developed by ERCOT.

(H) The EILS resource shall be served by a QSE qualified to provide ancillary services and capable of communicating with ERCOT and the EILS resource.

(I) An EILS resource shall not provide other ancillary services, including balancing energy services with the same capacity, while under an EILS Agreement.

(3) ERCOT shall establish an individual load baseline for each proposed EILS resource. If the EILS resource is an aggregation of ESI IDs, ERCOT shall take into account the load characteristics of each ESI ID represented by the EILS resource.

(A) ERCOT shall review IDR data or equivalent from the most recent available 12-month period to determine an EILS Resource's consumption. If 12 months of IDR data are not available, ERCOT may use reliable meter data for a shorter period or from a different source, at its reasonable discretion. If ERCOT does not possess sufficient data, the EILS Resource or its QSE must provide data to ERCOT according to ERCOT's specifications.

(B) ERCOT may establish an alternate baseline methodology to accommodate loads for which a sufficiently accurate default baseline cannot be established.

(C) Baselines shall be used to verify or establish an EILS Resource's maximum contract amount and to verify the EILS resource's performance as compared to its contracted capacity during an EILS deployment event.

(4) EILS shall be deployed by ERCOT by VDIs in a single phone call to all QSEs providing EILS.

(A) When ERCOT issues a VDI, 100% of the available contracted EILS resources shall be deployed.

(B) ERCOT may deploy EILS at any time during a settlement interval.

(C) An EILS resource shall be subject to a maximum of two deployments per EILS contract period, lasting no more than a total of eight hours per contract period, unless an EILS deployment is still in effect when the eighth hour lapses, in which case EILS deploy-

ment shall continue until ERCOT releases the EILS resource. EILS resources may return to service only after being released by ERCOT.

(D) ERCOT may conduct a load-shedding test of each EILS resource once a year unless the EILS resource has met its performance obligations during an EILS deployment during the preceding 12 months. ERCOT tests are not "deployments" under subparagraph (C) of this paragraph.

(d) EILS Payment and Charges.

(1) ERCOT shall pay a capacity payment to each QSE representing an EILS resource on an as-bid basis subject to modifications determined by ERCOT based on the EILS resource's availability during an EILS contract period, and the EILS resource's performance in a deployment event.

(2) ERCOT shall charge each QSE a capacity charge for EILS based upon its load ratio share during the relevant EILS time period and EILS contract period.

(3) There shall be no energy payments for providing EILS above and beyond typical load imbalance payments pursuant to the ERCOT protocols.

(4) ERCOT shall settle an EILS contract period through payments and charges on a settlement statement of a single operating day within 70 days following the completion of the EILS contract period.

(5) ERCOT shall make the following available to market participants through market notices and by posting on a publicly accessible section of the ERCOT web site:

(A) Methodology used to develop baseline formulas;

(B) Formulas used for wholesale market settlement; and

(C) Equations used to determine an EILS resource's compliance with its obligations in an EILS deployment.

(e) Compliance. QSEs representing EILS resources are subject to penalties for failure to meet their obligations under this section. ERCOT shall withhold all or part of an EILS resource's capacity payment for a contract period and suspend participation in EILS for six months if the EILS resource fails to make its committed load available during its committed hours, or fails to meet its load reduction obligations in an EILS deployment event. In order to be reinstated after the suspension the load must demonstrate its capability of performing the service by satisfactorily performing a test conducted by ERCOT.

(f) Reporting. Within 10 days of the EILS awards for a contract period, ERCOT shall report publicly the number of MW procured per time period, the number of resources providing the service, and the projected total cost of the service for that contract period. ERCOT shall review the effectiveness and benefits of the EILS and report its findings to the commission annually within 70 days of the completion of the EILS program year. The report shall contain, at a minimum, the number of MW procured in each period, the total dollar amount spent, the number and level of EECp events, and the number and duration of deployments.

(g) Implementation. ERCOT shall develop additional procedures, guides, and/or protocols that are consistent with this section and that ERCOT finds necessary to implement EILS, including but not limited to developing a standard form EILS Agreement and specific performance guidelines and grace periods for EILS Resources.

(h) Self Provision. ERCOT shall maintain procedures for self provision of EILS by any QSE.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 24, 2011.

TRD-201101182

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Effective date: March 24, 2011

Expiration date: June 1, 2011

For further information, please call: (512) 936-7223

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# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. ~~[Square brackets and strikethrough]~~ indicate existing rule text that is proposed for deletion. “(No change)” indicates that existing rule text at this level will not be amended.

## TITLE 22. EXAMINING BOARDS

### PART 15. TEXAS STATE BOARD OF PHARMACY

#### CHAPTER 291. PHARMACIES

##### SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

###### 22 TAC §291.34

The Texas State Board of Pharmacy proposes amendments to §291.34, concerning Records. The proposed amendments to §291.34, if adopted, clarify the requirements for making alterations to prescription records following a dispensing error and correct references.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will ensure proper beyond-use dating is on prescription labels for patient med-paks and accurate records are maintained by the pharmacy when a dispensing error is made. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, Fax (512) 305-8008. Comments must be received by 5:00 p.m., May 9, 2011.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this amendment: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

###### §291.34. Records.

(a) (No change.)

(b) Prescriptions.

(1) - (7) (No change.)

(8) Records Relating to Dispensing Errors.

(A) For purposes of this subsection, a dispensing error is defined as one of the following actions:

(i) an action committed by a pharmacist or other pharmacy personnel that causes a patient or patient's agent to take possession of a dispensed prescription drug that was not prescribed for or intended to be given to the patient or patient's agent; or

(ii) an action committed by a pharmacist or other pharmacy personnel that causes the patient or patient's agent to take possession of a dispensed prescription drug and an individual subsequently discovers that the patient has received an incorrect drug product, which includes incorrect strength, incorrect dosage form, and/or incorrect directions for use.

(B) If a dispensing error occurs, the following is applicable.

(i) Original prescription drug orders:

(I) shall not be destroyed and must be maintained in accordance with subsection (a) of this section; and

(II) shall not be altered. Altering includes placing a label or any other item over any of the information on the prescription drug order (e.g., a dispensing tag or label that is affixed to back of a prescription drug order must not be affixed on top of another dispensing tag or label in such a manner as to obliterate the information relating to the error).

(ii) Prescription drug order records maintained in a data processing system:

(I) shall not be deleted and must be maintained in accordance with subsection (a) of this section;

(II) may be changed only in compliance with subsection (e)(2)(B) of this section; and

(III) if the error involved incorrect data entry into the pharmacy's data processing system, this record must be voided or cancelled in the data processing system, so that the incorrectly entered prescription drug order may not be dispensed.

(c) Patient medication records.

(1) - (3) (No change.)

(4) A patient medication record shall be maintained in the pharmacy for two years. If patient medication records are maintained in a data processing system, all of the information specified in this subsection shall be maintained in a retrievable form for two years and information for the previous 12 months shall be maintained on-line. A ~~[Effective January 1, 2009, a]~~ patient medication record must contain documentation of any modification, change, or manipulation to a patient profile.

(5) (No change.)

(d) Prescription drug order records maintained in a manual system.

(1) (No change.)

(2) Refills.

(A) Each time a prescription drug order is refilled, a record of such refill shall be made:

(i) on the back of the prescription by recording the date of dispensing, the written initials or identification code of the dispensing pharmacist, [effective January 1, 2009,] the initials or identification code of the pharmacy technician or pharmacy technician trainee preparing the prescription label, if applicable, and the amount dispensed. (If the pharmacist merely initials and dates the back of the prescription drug order, he or she shall be deemed to have dispensed a refill for the full face amount of the prescription drug order); or

(ii) on another appropriate, uniformly maintained, readily retrievable record, such as medication records, which indicates by patient name the following information:

(I) unique identification number of the prescription;

(II) name and strength of the drug dispensed;

(III) date of each dispensing;

(IV) quantity dispensed at each dispensing;

(V) initials or identification code of the dispensing pharmacist;

(VI) [effective January 1, 2009,] initials or identification code of the pharmacy technician or pharmacy technician trainee preparing the prescription label, if applicable; and

(VII) total number of refills for the prescription.

(B) If refill records are maintained in accordance with subparagraph (A)(ii) of this paragraph, refill records for controlled substances in Schedules III - V shall be maintained separately from refill records of dangerous drugs and nonprescription drugs.

(3) - (5) (No change.)

(6) Each [Effective January 1, 2009, each] time a modification, change, or manipulation is made to a record of dispensing, documentation of such change shall be recorded on the back of the prescription or on another appropriate, uniformly maintained, readily retrievable record, such as medication records. The documentation of any modification, change, or manipulation to a record of dispensing shall include the identification of the individual responsible for the alteration.

(e) Prescription drug order records maintained in a data processing system.

(1) (No change.)

(2) Records of dispensing.

(A) (No change.)

(B) Each [Effective January 1, 2009, each] time a modification, change or manipulation is made to a record of dispensing, documentation of such change shall be recorded in the data processing system. The documentation of any modification, change, or manipulation to a record of dispensing shall include the identification of the individual responsible for the alteration. Should the data processing system not be able to record a modification, change, or manipulation to

a record of dispensing, the information should be clearly documented on the hardcopy prescription.

(C) The data processing system shall have the capacity to produce a daily hard-copy printout of all original prescriptions dispensed and refilled. This hard-copy printout shall contain the following information:

(i) unique identification number of the prescription;

(ii) date of dispensing;

(iii) patient name;

(iv) prescribing practitioner's name;

(v) name and strength of the drug product actually dispensed; if generic product [generic name], the brand name or manufacturer of drug dispensed;

(vi) quantity dispensed;

(vii) initials or an identification code of the dispensing pharmacist;

(viii) [effective January 1, 2009,] initials or an identification code of the pharmacy technician or pharmacy technician trainee performing data entry of the prescription, if applicable;

(ix) if not immediately retrievable via CRT display, the following shall also be included on the hard-copy printout:

(I) patient's address;

(II) prescribing practitioner's address;

(III) practitioner's DEA registration number, if the prescription drug order is for a controlled substance;

(IV) quantity prescribed, if different from the quantity dispensed;

(V) date of issuance of the prescription drug order, if different from the date of dispensing; and

(VI) total number of refills dispensed to date for that prescription drug order; and

(x) [effective January 1, 2009,] any changes made to a record of dispensing.

(D) - (K) (No change.)

(3) - (6) (No change.)

(f) - (j) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 28, 2011.

TRD-201101213

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: May 8, 2011

For further information, please call: (512) 305-8028



## PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

## CHAPTER 511. ELIGIBILITY

### SUBCHAPTER C. EDUCATIONAL REQUIREMENTS

#### 22 TAC §511.52

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.52, concerning Recognized Colleges and Universities.

The amendment to §511.52 will clarify the effective date of the recently adopted accreditation rule for purposes of qualifying to sit for the CPA exam and clarify that correspondence courses and vocational school coursework will not qualify a candidate to sit for the CPA exam.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a greater clarity for applicants and potential applicants regarding educational requirements to sit for the CPA exam.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the rule amendment affects only Board structure and does not affect the activities of the public. Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on May 9, 2011. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health,

safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

*§511.52. Recognized Colleges and Universities.*

(a) In considering the qualifications of an applicant, the board shall generally accept colleges or universities which offer a baccalaureate or higher degree, and which are recognized by one of the following accrediting associations:

- (1) Middle States Association of Colleges and Schools;
- (2) North Central Association of Colleges and Schools--Higher Learning Commission;
- (3) New England Association of Schools and Colleges--Commission on Institutions of Higher Education;
- (4) Northwest Commission on Colleges and Universities;
- (5) Western Association of Schools and Colleges--Commission for Senior Colleges; or
- (6) Southern Association of Colleges and Schools--Commission on Colleges.

(b) Effective June 1, 2012 [2011], the board will accept schools accredited by the Southern Association of Colleges and Schools--Commission on Colleges and the schools accredited by the associations identified in subsection (a)(1) - (5) of this section so long as the schools accredited by the identified associations offer a baccalaureate or higher degree, and have a business school or accounting program accreditation recognized by the Council for Higher Education Accreditation (CHEA) as a specialized or professional accrediting organization. Examples of a specialized or professional accrediting organization are the Association to Advance Collegiate Schools of Business-International (AACSB) or the Association of Collegiate Business Schools and Programs (ACBSP).

(c) A university that does not meet the requirements of subsection (a) or (b) of this section, may appeal to the board for consideration. A university recognized by the board under this provision must be reconsidered for approval by the board on the fifth year anniversary of the approval. Universities that do not request or receive re-approval will no longer be recognized under this provision at the conclusion of the fifth year anniversary.

(d) The board may receive assistance from the reporting institution in the State of Texas in evaluating an educational institution. Correspondence schools and vocational schools do not meet the criteria.

(e) The board recognizes and accepts ~~only~~ community colleges that offer an accounting program reviewed and accepted by the board. (See §511.57(a)(2) and §511.58(a) of this chapter for degree and course requirements.)

(f) Interpretive Comment: Subsection (a) of this section shall apply to an applicant for the CPA Examination who earned a bachelor's degree at a university prior to the effective date of subsection (b) of this section or who has substantially completed coursework for a bachelor's degree prior to the effective date of subsection (b) of this section. Sub-

stantially completed means that the applicant has completed all but the last 18 semester hours required to earn a bachelor's degree.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 24, 2011.

TRD-201101175

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: May 8, 2011

For further information, please call: (512) 305-7842



## CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

### SUBCHAPTER C. ETHICS RULES: INDIVIDUALS AND SPONSORS

#### 22 TAC §523.131

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.131, concerning Board Approval of Ethics Course Content.

The amendment to §523.131 will require the content of a board-approved ethics course to contain case studies taken from public practice and either industry, government or education.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be that CPAs who take the board-approved ethics course will have access to a wider variety of case studies taken from different practice areas.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the rule amendment affects only Board structure and does not affect the activities of the public. Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must

be received at the Board no later than noon on May 9, 2011. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

#### *§523.131. Board Approval of Ethics Course Content.*

(a) The content of an ethics course designed to satisfy the four hour ethics CPE requirements of §523.130 of this title (relating to Ethics Course Requirements for Licensees) must be submitted to and be approved by the CPE committee of the board for initial approval and upon request thereafter. The primary objectives of the Ethics Course shall be to:

(1) encourage the licensee to become educated in the ethics of the profession;

(2) convey the intent of the board's Rules of Professional Conduct in the licensee's performance of professional accounting services or professional accounting work, and not mere technical compliance;

(3) apply ethical judgment in interpreting the rules and determining the public interest. The public interest should be placed ahead of self-interest, even if it means a loss of job or client;

(4) emphasize the ethical standards of the profession, as described in this section; and

(5) review and discuss the board's Rules of Professional Conduct and their implications for persons in a variety of practices, including at least one example from subparagraph (A) of this paragraph and at least one example from either subparagraph (B) or (C) of this paragraph:

(A) a licensee engaged in the client practice of public accountancy who performs attest and non-attest services, as defined in §501.52 of this title (relating to Definitions); and

(B) a licensee ~~holder~~ employed in industry who provides internal accounting and auditing services; or ~~and~~

(C) a licensee employed in education or in government accounting or auditing.

(b) To meet the objectives of subsection (a) of this section, a course must be four hours and include components that cover:



- (1) ethical principles and values;
- (2) ethical reasoning and dilemmas;
- (3) the board's Rules of Professional Conduct with special focus on recent changes in those rules; and
- (4) sufficient case studies that require application of ethical principles, values, and ethical reasoning within the context of the board's Rules of Professional Conduct.

(c) Course content shall be approved only after demonstrating, either in a live instructor format or a blended program format or interactive (computer based) format, as defined in §523.102(c)(1) of this title (relating to CPE Purpose and Definitions), that the course contains the underlying intent established in the following criteria:

(1) the course shall be designed to teach CPAs to achieve and maintain the highest standards of ethical conduct through ethical reasoning and the core values of the profession: integrity, objectivity and independence, as ethical principles in addition to rules of conduct;

(2) the course shall address ethical considerations and the application of the board's Rules of Professional Conduct to all aspects of the professional accounting work whether performed by CPAs in client practice or CPAs who are not in client practice; and

(3) the course shall convey the spirit and intent of the board's Rules of Professional Conduct in the licensee's performance of accounting services or professional accounting work, and not mere technical compliance.

(d) Ethics courses must be taught in a single session.

(e) Ethics Courses may be reevaluated as required by the board.

(f) At the conclusion of each course, the sponsor shall administer a test to determine whether the program participants have obtained a basic understanding of the course content, including the need for a high level of ethical standards in the accounting profession.

(g) A sponsor of an ethics course approved by the board pursuant to this section shall comply with the board's rules concerning sponsors of CPE and shall provide its advertising materials to the board's CPE committee for approval. Such advertisements shall:

- (1) avoid commercial exploitation;
- (2) identify the primary focus of the course; and
- (3) be professionally presented and consistent with the intent of §501.82 of this title (relating to Advertising).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 24, 2011.

TRD-201101174

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: May 8, 2011

For further information, please call: (512) 305-7842



## TITLE 34. PUBLIC FINANCE

## PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

### CHAPTER 3. TAX ADMINISTRATION

#### SUBCHAPTER A. GENERAL RULES

##### 34 TAC §3.2

The Comptroller of Public Accounts proposes amendments to §3.2, currently titled Application of Payments; Unjust Enrichment; and Refunds, which is proposed to be renamed Offsets and Application of Credits and Payments to Liabilities; Unjust Enrichment. The section is being amended to memorialize in a formal rule longstanding agency policy with respect to the treatment of offsets and procedures for offset requests, as well as procedures for the application of credits.

The provisions of current subsections (a) and (b) regarding the application of payments are now incorporated into new subsection (b)(3). Current subsection (c) regarding unjust enrichment is unchanged. Current subsection (d) was originally added to §3.2 to implement House Bill 1, 78th Legislative Session, 2003, which was the appropriations bill, and specifically to establish administrative and procedural guidelines for the appropriation of refunds as per House Bill 1 for the 2004-2005 biennium. These special refund requirements have had no legal effect since September 1, 2005 and are therefore being proposed for deletion. The section is reorganized to reflect the proposed additions and deletions.

New subsection (a) provides definitions for terms used in the section. New subsection (b) concerns offsets and the application of credits and payments to liabilities. More specifically, subsection (b)(1) explains the information that must be provided in a request for any offset, along with how and when the request must be provided to the comptroller. Subsection (b)(2) explains when offsets are not allowed, including examples for how the comptroller will apply this section to certain fact patterns. Subsection (b)(3) explains how approved credits and payments will be applied.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by providing guidance to taxpayers with regard to offsets and credits. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The rule is proposed under Tax Code, §111.002, which provides the comptroller with the authority to adopt rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The rule implements Tax Code, §§111.060 (Interest on Delinquent Tax), 111.064 (Interest on Refund or Credit), 111.104 (Refunds), and 151.508 (Offsets).

§3.2. Offsets and Application of Credits and Payments to Liabilities; Unjust Enrichment [Application of Payments; Unjust Enrichment; and Refunds].

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. [Payments received by the comptroller for application against existing liabilities will be credited toward the period designated by the taxpayer under conditions that are not prejudicial to the interest of the State of Texas. A condition that is considered prejudicial is the imminent expiration of the statute of limitations for a period or periods. Nondesignated payments shall be applied in the order of the oldest liability first, until the payment is exhausted. Crediting of a payment toward a specific liability period will be first against the tax, with any surplus used to pay off penalty and interest unless the comptroller determines that a different order of payment credit should be followed with regard to a particular tax or factual situation.]

(1) Credit--An available balance for transfer or refund, including funds from another tax type.

(2) Offset--A period-by-period reduction in amounts owed by a taxpayer.

(3) Period--Filing period, such as month, quarter, or year.

(b) Offsets and application of credits and payments to liabilities.

(1) Requirements for offset requests.

(A) A taxpayer must file a written request to offset a liability before the determination, order, or decision establishing the liability becomes final. A separate request must be made for each credit a taxpayer proposes to apply to a liability. If a request is made to offset multiple liabilities, each of the liabilities must be listed in the order in which the taxpayer wants the credits applied.

(B) The written request for offset must include the following information for both the credits and liabilities:

(i) taxpayer number;

(ii) the audit or refund period, exam, or return period in which the credit and liability was created;

(iii) tax type; and

(iv) the tax amount.

(2) Rules for when offsets are and are not allowed.

(A) A credit that has already been refunded to the taxpayer or applied as a payment cannot be used to offset a liability.

(B) Offsets will only be allowed for liabilities owed by the same legal entity to which the credit is due.

(C) Any claim for refund filed on or after September 1, 2005 for a report period due on or after January 1, 2000 cannot be used to offset any liabilities due on a period-by-period basis and will be processed separately from any amounts found due in an audit. For more information about how to file a refund claim see §3.325 of this title (relating to Refunds and Payments Under Protest). This policy does not preclude auditors from making adjustments in the course of an audit that reflect overpayments of tax that have not already been separately identified in a refund claim such that any interest due from or owed to a taxpayer is computed on the final balance. The comptroller will apply the following policies to the following facts, but this does not control how the comptroller will handle other facts that may be presented.

(i) Audit in progress; refund items found by or presented to auditor during the audit. If an audit entrance conference is after September 1, 2005 and the auditor finds credits in the normal course of the audit, or the taxpayer brings credit items to the auditor's attention and they are not perfected in a separate claim for refund, the auditor will include the credits in the audit unless the taxpayer specifically requests that they be processed separately. If the credit items are processed within the audit, any offsets between deficiencies and credits will occur before the calculation of penalty and interest due as a result of the audit.

(ii) Audit completed; request for redetermination filed. If an audit is completed and a taxpayer timely files a request for redetermination that includes new refund items, or identifies refund items for additional consideration that were presented during the audit and not approved by the auditor, the refund items will be processed within the audit. Any offsets between deficiencies and credits will occur before the calculation of penalty and interest due as a result of the audit. If a taxpayer makes an additional claim for refund after the time in which a redetermination may be timely requested, those refund items will be treated as a separate, original claim for refund and they will not be processed as part of the request for redetermination.

(iii) Audit completed; claim for refund filed after notification of audit becomes final. If a taxpayer does not request redetermination and files a claim for refund after the audit becomes final, the refund claim and any interest due will be processed separately from the audit. Refunds due the taxpayer may be applied as a payment to any outstanding liability based on the date those funds are available for payment to the taxpayer.

(iv) Claim for refund filed; audit begins at a later date. If a taxpayer files a claim for refund after September 1, 2005 and an audit is started after the date the claim is filed, any refund amount granted will be processed separately from any amount found due based on the audit. Any refund due the taxpayer may be applied as a payment to any outstanding liability based on the date those funds are available for payment to the taxpayer, but the refund will not be processed as an offset.

(D) Amounts paid to settle a disputed obligation, including but not limited to settlements relating to litigation, are not credits and cannot be used to offset a tax liability or any resulting interest or penalty amounts.

(E) Amounts paid pursuant to a court judgment resulting from a claim for refund are not credits and cannot be used to offset a tax liability or any resulting interest or penalty amounts.

(F) An offset may be recalculated and billed if the credit used for the offset is subsequently reduced or eliminated.

(G) The comptroller will determine on a case-by-case basis whether an offset applies in any situation not specifically covered by this section, but will not approve an offset request for the following:

(i) oil and gas severance tax;

(ii) property tax;

(iii) unclaimed property;

(iv) inheritance tax;

(v) motor fuel tax refunds for fuel not used on Texas highways;

(vi) franchise tax refunds resulting from an audit or adjustment made by the Internal Revenue Service;

(vii) enterprise zone projects;

(viii) refunds due by the Texas Workforce Commission;

(ix) bad debt credits; and

(x) amounts governed under the Texas Insurance Code.

(3) Application of credits and payments.

(A) When credits are established in a period, they will automatically be netted against liabilities in the same period. If there are no liabilities to net against the credits, or the credits are greater than the liabilities in the same period, the credits will first be applied as payments to liabilities in prior periods.

(B) The application of credits will begin in the oldest liability period and apply within that period first to tax, next to penalty, and finally to interest. If credits remain, they will be applied to the next oldest period in the same manner, until all prior liabilities are paid or the credits are extinguished.

(C) If a credit remains after all preceding liabilities have been satisfied, and the taxpayer is current in all tax filings, applicable credit interest will be calculated for periods due on or after January 1, 2000, and a refund will be issued for the credit amount and interest.

(D) When a credit is applied to a tax liability in a prior period, the liability will continue to accrue interest under Tax Code, §111.060 through the due date of credit period. Unpaid tax balances after application of a credit will continue to accrue interest through the due date of the next applied credit or until midnight of the payment postmark date.

(E) When a credit is applied to a later liability period, any unpaid balance will continue to accrue applicable interest through the date of the next applied credit. Interest is accrued in accordance with Tax Code, §111.060.

(F) When a credit is applied to a later liability period, the credit will accrue applicable credit interest under Tax Code, §111.064 through the due date of the liability period in which the credit was applied. If there is a remaining credit balance, it will continue to accrue applicable credit interest until applied to another deficiency or refunded.

(G) [(b)] Under circumstances where multiple type tax liabilities exist, such as city and state sales tax, payments will be divided proportionately between the taxes so that each tax shall share the payment on the basis of the amount due each tax.

(c) Unjust enrichment.

(1) If amounts are collected as tax in transactions on which tax is not due, the comptroller will require, under the doctrine of unjust enrichment, that these amounts be remitted to the state or be refunded to the customers from whom they were collected.

(2) In the case of refunded amounts, documentary evidence must be retained establishing the transaction, the amount collected, the party from whom collected, the amount refunded, and the party to whom refund is made.

[(d) Refunds and Appropriation.]

[(1) Limitation.]

[(A) During a state biennium, the comptroller cannot issue to any given taxpayer warrants for refunds in excess of \$250,000 per tax type. A taxpayer may obtain a refund up to \$250,000 per tax type from the comptroller, but any amount in excess of \$250,000 must be presented to the legislature for a specific appropriation in order for

the payment to be made or the taxpayer may request that the excess amount be applied as a credit as provided by paragraph (3) of this subsection.]

[(B) The limitation of \$250,000 applies to each tax, fee, or other assessment collected or administered by the comptroller.]

[(C) Unless otherwise provided by this subsection, the limitation of \$250,000 applies to all tax refunds that the comptroller determines are due, regardless of whether the refund is verified as a result of an informal refund review, an audit resulting in a credit, a final determination of a contested administrative proceeding, a final judgment of a court case, or a settlement.]

[(D) In determining whether a refund claim would cause a taxpayer to exceed the \$250,000 limitation, the comptroller will consider all refunds, including tax, penalty, all applicable statutory interest on the tax, and any costs or attorney fees awarded by a court order, paid by the comptroller to the taxpayer for a tax type during the biennium.]

[(2) Exclusions.]

[(A) The \$250,000 limitation does not apply to a payment made for the following:]

[(i) a court case where a judgment order of the trial court was entered prior to June 22, 2003, and no appeal or rehearing, or application therefor, is pending and the time period to file an appeal or rehearing has expired;]

[(ii) a written settlement agreement executed by both parties prior to June 22, 2003; or]

[(iii) a Comptroller's final decision in a contested administrative proceeding issued prior to June 22, 2003, if the time period to file a rehearing or a petition in court has expired.]

[(B) Credits taken on returns: The limitation of \$250,000 does not apply to the total aggregate credits taken on returns filed with the comptroller during a biennium. However, if a credit taken on a given return results in a net overpayment, then the \$250,000 limitation applies to any potential refund amount.]

[(C) Other exclusions: The following categories are excluded from the \$250,000 limitation:]

[(i) Refunds of unclaimed property under Title 6 of the Property Code;]

[(ii) Refunds resulting from a claim filed with the comptroller within 120 days of the due and payable date of the tax and verified and granted by the comptroller during the informal review process under Tax Code, §111.1042;]

[(iii) Refunds of inheritance tax under Chapter 211, Tax Code;]

[(iv) Refunds of motor fuel tax paid on motor fuel not used on Texas highways;]

[(v) Refunds resulting from a timely filing of an amended franchise tax report due under Tax Code, §111.206 and §171.212, as a result of an audit or adjustment made by the Internal Revenue Services or as a result of filing an amended federal income tax return or other return that changes net taxable earned surplus]

[(vi) Refunds for enterprise projects under Tax Code §151.429, for defense readjustment projects under Tax Code §151.4291, for job retention under Tax Code §151.431, for enterprise zone under Tax Code §171.501 or any other similar refund incentives based on economic development; and]

{{vii}} Refunds made under Tax Code §111.109, pursuant to a voucher issued by the Texas Workforce Commission under Subchapter H, Chapter 301, Labor Code.}

{{3}} Transfer of net credits among a taxpayer's accounts}

{{A}} Informal review, audit or administrative hearing process.}

{{i}} If a taxpayer has both a liability and a refund for the same tax type, the taxpayer may request that the comptroller apply the refund as a credit against the liability. If the refund exceeds the liability such that applying the credit results in a net refund of less than \$250,000, then the comptroller may issue that net refund, subject to the aggregate \$250,000 limitation per tax type for the biennium. For example, assume a taxpayer has a sales tax audit liability of \$400,000 and a sales tax refund of \$500,000. If the comptroller applies the refund as a credit to the audit liability, then the comptroller may issue a refund of \$100,000, as long as the issuance of that refund will not exceed the \$250,000 biennial cap for that taxpayer. If the refund would exceed the biennial cap, then the comptroller may issue any portion of the \$100,000 that would not exceed the limitation.}

{{ii}} If a taxpayer has both a liability and a refund for different tax types, the taxpayer may request that the comptroller apply the refund as a credit against the liability. If the refund exceeds the liability such that applying the credit results in a net refund of less than \$250,000, then the comptroller may issue that net refund, subject to the aggregate \$250,000 limitation per tax type for the biennium. For example, assume a taxpayer has a sales tax audit liability of \$400,000 and a franchise tax refund of \$500,000. If the comptroller applies the refund as a credit to the audit liability, then the comptroller may issue a refund of \$100,000 in franchise tax, as long as the refund does not exceed the \$250,000 limitation for franchise tax refunds.}

{{iii}} If after the comptroller applies a taxpayer's refund to the taxpayer's tax liability, the taxpayer has a remaining refund amount for which the comptroller cannot issue a refund warrant because of the \$250,000 limitation, the taxpayer may request that the remaining refund be applied as a credit payment toward the taxpayer's future tax liabilities. The request must be in writing and be specific enough for the comptroller to ascertain to which liability the credit is to be applied.}

{{iv}} Interest that is otherwise authorized by statute will accrue until the net credit is applied as a payment to a tax liability.}

{{B}} Court cases}

{{i}} In the case of a court judgment or a settlement of a court case, the comptroller will credit any tax liability that the taxpayer may owe at the time of judgment or settlement, and will issue a refund warrant in an amount that would not cause the \$250,000 biennial cap for the tax type to be exceeded. The comptroller will not transfer any amount in excess of the \$250,000 biennial cap as a credit payment to reduce the taxpayer's tax liabilities that are or will be incurred after the judgment or settlement, and the net amount must be presented to the legislature for a specific appropriation.}

{{ii}} Any statutory interest will accrue until such time a specific appropriation is obtained.}

{{4}} Assignments.}

{{A}} A taxpayer may assign its right to receive a refund, but any defense that the comptroller may assert against the assignor applies against the assignee.}

{{B}} Any refund amount that is assigned will be counted toward the assignor's \$250,000 biennial cap. For example, an assignor

assigns its right to receive a refund of \$200,000, but the assignor has previously obtained a refund of \$75,000 in the same biennium. The comptroller will issue a warrant in the amount of \$175,000 to the assignee, and will allow the assignee to use the remaining \$25,000 to apply as a credit against current or future tax liabilities.}

{{C}} When a refund assignment is presented, the comptroller will treat the assigned refund as a payment from the assignee made on the date the assignee submits the assignment to the comptroller.}

{{5}} Appropriation. At the end of the biennium, the comptroller will submit information to the legislature to obtain appropriation for refunds or credits that have not been paid or exhausted through credit transfers or assignment.}

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 22, 2011.

TRD-201101139

Ashley Harden

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: May 8, 2011

For further information, please call: (512) 475-0387



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 11. TEXAS JUVENILE PROBATION COMMISSION

#### CHAPTER 344. EMPLOYMENT, CERTIFICATION AND TRAINING

The Texas Juvenile Probation Commission proposes amendments to §§344.100, 344.200, 344.230, 344.520, 344.600, 344.620, 344.630, 344.700, 344.840, 344.850, 344.860, and 344.880, concerning employment, certification and training. These amendments are proposed in an effort to comply with §141.042, Texas Human Resources Code, and House Bill 3689, adopted by the 81st Texas Legislature, making the Commission responsible for the development of Non-Secure Correctional Facility standards including appropriate, educational, pre-service and in-service training, and certification standards.

Lisa Capers, Deputy Executive Director and General Counsel, has determined that for the first five-year period the amendments are in effect, there will no fiscal impact for state or local government as a result of enforcement and implementation. There will be no fiscal implications for small businesses or individuals as a result of enforcement or implementation of the proposed amendments.

Ms. Capers has also determined that for each year of the first five years the amendments are in effect, the public benefit expected as a result of enforcement or implementation will be that qualified individuals will have the necessary training and credentials to supervise juveniles court ordered to non-secure settings.

Public comments on the proposed amendments may be submitted in writing to Kristy Almager at the Texas Juvenile Probation

Commission, P.O. Box 13547, Austin, Texas 78711-3547. Comments may also be submitted electronically to *Kristy.Almager@tjpc.state.tx.us* or faxed to (512) 424-6718.

## SUBCHAPTER A. DEFINITIONS AND APPLICABILITY

### 37 TAC §344.100

The amendments are proposed under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affected by the amendments.

#### §344.100. Definitions.

The following words and terms, when used in this chapter shall have the following meanings, unless context clearly indicates otherwise.

(1) Applicant--An individual applying for certification as a juvenile probation officer, ~~or~~ juvenile supervision officer or youth activities supervisor.

(2) Board--The governing board of the Texas Juvenile Probation Commission.

(3) Certified Officer--A juvenile probation officer or juvenile supervision officer who has met the minimum certification requirements and is currently certified by the Commission.

(4) Chief Administrative Officer--Regardless of title, the person hired by a juvenile board who is responsible for the oversight of the day-to-day operations of a single juvenile probation department for a county or a multi-county judicial district.

(5) Commission--The Texas Juvenile Probation Commission.

(6) Competency Examination--An examination or other assessment instrument required by any statute or Commission rule that governs an individual's certification as a juvenile probation officer or juvenile supervision officer.

(7) Continuing Education--Courses, programs, or organized learning experiences required to maintain certification and to enhance personal or professional goals.

(8) Direct Unsupervised Access--The ability to physically interact with juveniles in a juvenile justice program or facility without the accompanying physical presence of or constant visual monitoring by a certified officer or other authorized employee of the program or facility.

(9) Facility Administrator--An individual designated by the chief administrative officer or governing board of a juvenile justice facility as the on-site program director or superintendent of a secure facility.

(10) Juvenile Justice Facility ("facility")--A facility, including its premises and all affiliated sites, whether contiguous or detached, operated wholly or partly by or under the authority of the governing board, juvenile board or by a private vendor under a contract with the governing board, juvenile board or governmental unit that serves juveniles under juvenile court jurisdiction. The term includes:

(A) A public or private juvenile pre-adjudication secure detention facility, including a short-term detention facility (i.e., holdover) required to be certified in accordance with Texas Family Code §51.12;

(B) A public or private juvenile post-adjudication secure correctional facility required to be certified in accordance with Texas Family Code §51.125, except for a facility operated solely for children committed to the Texas Youth Commission; and

(C) A public or private non-secure juvenile post-adjudication residential treatment facility housing juveniles under juvenile court jurisdiction.

(11) Juvenile Justice Program ("program")--A program or department operated wholly or partly by the governing board, juvenile board or by a private vendor under a contract with the governing board or juvenile board that serves juveniles under juvenile court jurisdiction or juvenile board jurisdiction. The term includes a juvenile justice alternative education program and a non-residential program that serves juvenile offenders under the jurisdiction of the juvenile court or juvenile board jurisdiction and a juvenile probation department.

(12) Juvenile Probation Department ("department")--All physical offices and premises utilized by a county or district level governmental unit established under the authority of a juvenile board to facilitate the execution of the responsibilities of a juvenile probation department enumerated in Title 3 of the Texas Family Code and Chapter 141 of the Texas Human Resources Code.

(13) Juvenile Probation Officer--An individual whose primary responsibility and essential job function is to provide juvenile probation services and supervision duties authorized under statutory and agency administrative law that can only be performed by an active certified juvenile probation officer in good standing with the Commission.

(14) Juvenile Supervision Officer--An individual whose primary responsibility and essential job function is the supervision of juveniles in a juvenile justice program or juvenile justice facility.

(15) Mandatory Topics--Specified training topics mandated in the Commission's administrative standards designed to provide officers the essential skills and knowledge necessary for certification and to fulfill the duties and responsibilities of a certified officer.

(16) One Year of Graduate Study--As described in Texas Human Resources Code §141.061(a)(3)(A), successful completion of at least 18 post-graduate credit hours in criminology, corrections, counseling, law, social work, psychology, sociology, or other field of instruction approved by the Commission at a college or university accredited by an accrediting organization recognized by the Texas Higher Education Coordinating Board.

(17) Training--An organized, planned and evaluated activity designed to achieve specific learning objectives.

(18) Youth Activities Supervisor--Regardless of title, an individual whose primary responsibility and essential job function is the supervision of juveniles strictly in a non-secure setting within a juvenile justice program or facility other than a juvenile justice alternative education program.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 28, 2011.  
TRD-201101216

Lisa A. Capers  
Deputy Executive Director and General Counsel  
Texas Juvenile Probation Commission  
Earliest possible date of adoption: May 8, 2011  
For further information, please call: (512) 424-6710

◆ ◆ ◆  
**SUBCHAPTER B. QUALIFICATIONS FOR  
EMPLOYMENT**

**37 TAC §344.200, §344.230**

The amendments are proposed under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affected by the amendments.

*§344.200. General Qualifications for Employment.*

(a) Juvenile Probation Officer. To be eligible for employment as a juvenile probation officer, supervisor or chief administrative officer, an applicant shall:

- (1) be at least 21 years of age;
- (2) be of good moral character and have no disqualifying criminal history as described in this chapter;
- (3) have acquired a bachelor's degree conferred by a college or university accredited by an accrediting organization recognized by the Texas Higher Education Coordinating Board;
- (4) possess the work experience or graduate study required in §344.210 of this chapter; and
- (5) never have had any type of certification revoked by lawful authority of the Commission and not be currently under an order of suspension as described in §344.840(d) of this chapter.

(b) Juvenile Supervision Officer and Youth Activities Supervisor. To be eligible for employment as a juvenile supervision officer or youth activities supervisor, an applicant shall:

- (1) be at least 21 years of age;
- (2) be of good moral character and have no disqualifying criminal history as described in this chapter;
- (3) have acquired a high school diploma or equivalent; and
- (4) never have had any type of certification revoked by lawful authority of the Commission and not currently be under an order of suspension as described in §344.840(d) of this chapter.

(c) Facility Administrator. To be eligible for employment as a facility administrator, an applicant shall:

- (1) meet the minimum requirements to become a juvenile probation officer as described in subsection (a) of this section; and
- (2) maintain an active certification as a juvenile supervision officer.

*§344.230. Persons Who May Not Act as Chief Administrative Officers, Juvenile Probation Officers, [Ø] Juvenile Supervision Officers or Youth Activities Supervisor.*

A peace officer, prosecuting attorney, or other person who is employed by or who reports directly to a law enforcement or prosecution official may not act as a chief administrative officer, juvenile probation officer, [Ø] juvenile supervision officer or youth activities supervisor or be

made responsible for supervising a juvenile in a juvenile justice facility or program.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 28, 2011.

TRD-201101206

Lisa A. Capers  
Deputy Executive Director and General Counsel  
Texas Juvenile Probation Commission  
Earliest possible date of adoption: May 8, 2011  
For further information, please call: (512) 424-6710

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**SUBCHAPTER E. EDUCATION  
REQUIREMENTS FOR EMPLOYMENT  
AND CERTIFICATION**

**37 TAC §344.520**

The amendments are proposed under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affected by the amendments.

*§344.520. Verification of Education Requirements.*

The applicant for employment as a juvenile probation officer, [Ø] juvenile supervision officer or youth activities supervisor shall provide the department or facility with official documentation that verifies that the applicant meets the educational requirements for certification.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa A. Capers  
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Texas Juvenile Probation Commission  
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**SUBCHAPTER F. TRAINING AND  
CONTINUING EDUCATION**

**37 TAC §§344.600, 344.620, 344.630**

The amendments are proposed under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affected by the amendments.

*§344.600. Minimum Requirements for Certification.*

(a) An applicant for certification as a juvenile probation officer or juvenile supervision officer shall receive a minimum of 80 hours of

training including training in mandatory topics described in §344.620 of this chapter prior to certification. Duties that may be performed by individuals hired as juvenile supervision officers or juvenile probation officers prior to their certification are described in applicable chapters of this title [under Title 37 of the Texas Administrative Code].

(b) An applicant for certification as a youth activities supervisor shall receive a minimum of 56 hours of training, including training in the mandatory topics described in §344.620 of this chapter, prior to certification. Duties performed by individuals hired and not yet certified as youth supervision workers are described in applicable chapters of this title.

*§344.620. Required Training for Certification.*

(a) **Mandatory Topics.** Successful completion of a competency exam based on the following topics is required prior to performing the duties of a certified officer and for certification.

(1) **Juvenile Probation Officer.**

- (A) Role of the probation officer;
- (B) Case planning and management;
- (C) Recognizing and supervising youth with mental health issues;
- (D) Officer safety and mechanical restraints;
- (E) Texas Family Code and related laws;
- (F) Legal liabilities;
- (G) Courtroom proceedings and presentation;
- (H) Code of ethics, disciplinary and revocation hearing procedures;
- (I) Identifying and reporting abuse, neglect, and exploitation;
- (J) Prison Rape Elimination Act; and
- (K) Suicide prevention and intervention.

(2) **Juvenile Supervision Officer and Youth Activities Supervisor.**

- (A) Juvenile rights;
- (B) Texas Family Code and related laws;
- (C) Identifying and reporting abuse, neglect, and exploitation;
- (D) Prison Rape Elimination Act;
- (E) Suicide prevention and intervention;
- (F) Legal liabilities;
- (G) Recognizing and supervising youth with mental health issues;
- (H) Adolescent physical development and exercise related health risks;
- (I) HIV/AIDS and other communicable diseases; and
- (J) Code of ethics, disciplinary and revocation procedures.

(b) Additional Requirements for Juvenile Supervision Officer and Youth Activities Supervisor Certification.

(1) Prior to providing resident supervision, all juvenile supervision officers shall receive training and maintain current certification in:

- (A) Cardiopulmonary Resuscitation (CPR);
- (B) First Aid; and
- (C) A Personal Restraint Technique approved by the Commission.

(2) Juvenile supervision officers and youth activities supervisors working in juvenile justice facilities shall receive training in the following additional topics for certification:

- (A) Behavior observation and recording;
- (B) Behavior management;
- (C) Risk management, safety and security;
- (D) Medical and health services;
- (E) Departmental security, emergency and evacuation procedures;
- (F) Facility's suicide prevention plan;
- (G) Department procedures for reporting abuse, neglect and exploitation;
- (H) Recognizing and responding to medical and mental health needs of residents;
- (I) Supervising residents in seclusion;
- (J) Facility's fire drill procedures;
- (K) Grievance procedures;
- (L) Confidentiality of information;
- (M) Cultural diversity;
- (N) Use of restraints; and
- (O) Transportation.

*§344.630. On-the-Job Training.*

(a) A juvenile justice program or juvenile justice facility may implement a structured on-the-job training program for use in meeting certification and continuing education requirements as described in §344.620 of this chapter.

(b) The training program shall utilize the format developed by the Commission or an equivalent format developed by the department to document the provision of on-the-job training.

(c) The chief administrative officer, facility administrator or designee shall select staff, based on experience, qualifications and/or education, to provide on-the-job training.

(d) A maximum of 40 hours of on-the-job training provided in accordance with this section may be used to meet the certification or continuing education requirement in a given reporting period.

(e) Youth activities supervisors have a maximum of 30 hours of on-the-job training that may be applied toward the initial certification and 40 hours toward the continuing education requirement in a given reporting period.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa A. Capers  
Deputy Executive Director and General Counsel  
Texas Juvenile Probation Commission  
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## SUBCHAPTER G. COMPETENCY EXAMINATION

### 37 TAC §344.700

The amendments are proposed under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affected by the amendments.

#### §344.700. *Competency Examination Requirement.*

(a) A juvenile probation officer, ~~or~~ juvenile supervision officer or youth activities supervisor shall pass the competency exam prescribed by the Commission in order to be eligible for certification.

(b) A juvenile probation officer, ~~or~~ juvenile supervision officer or youth activities supervisor shall complete the mandatory training required in §344.620(a)(1) or (2) of this chapter prior to attempting the competency exam.

(c) The Commission shall establish a plan for the administration of the examination, including any required fees.

(d) The Commission shall determine the satisfactory level of performance.

(e) Scores shall be sent electronically or by other means established by the Commission to the examinee and the chief administrative officer or designee upon completion of the exam.

(f) The Commission shall maintain a record of competency examination results.

(g) The requirements of this subchapter apply to applicants for positions requiring certification who begin employment as:

(1) a juvenile probation officer ~~[officers]~~ on or after September 1, 2011; or [who begin employment as]

(2) a juvenile supervision officer or youth activities supervisor ~~[officers]~~ on or after September 1, 2012.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa A. Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

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## SUBCHAPTER H. CERTIFICATION

### 37 TAC §§344.840, 344.850, 344.860, 344.880

The amendments are proposed under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affected by the amendments.

#### §344.840. *Certification Status.*

(a) Active. An officer shall be required to maintain an active certification in order to perform the duties of a juvenile probation officer, ~~or~~ juvenile supervision officer or youth activities supervisor. The individual and the employing department shall ensure that all requirements under this chapter are met in order to maintain the certification in active status. An active certification status requires that the officer shall have:

(1) no disqualifying criminal history as described in §344.400 of this chapter;

(2) no current suspension or revocation of certification under the lawful authority of the Commission; and

(3) met the continuing education requirements set forth in §344.640 of this chapter.

(b) Inactive. An officer's certification shall be placed on inactive status in the event that the certification application is found to have a defect or flaw, the officer fails to meet reporting requirements or is no longer employed by a juvenile probation department. An individual whose certification is inactive is not eligible to perform the duties of a certified officer or to receive salary adjustment funds from the Commission. The juvenile probation department shall submit documentation through the Commission's automated certification system that an officer has completed all reporting requirements in accordance with §344.830 of this chapter in order to reactivate the officer's certification.

(c) Provisional. The Commission may issue a provisional certification for a period not to exceed 180 calendar days to an individual whose educational credentials require evaluation or verification. During the provisional certification period, the officer may perform the duties of a certified officer. In the event that the education validation is denied or is not validated within the 180 calendar day period, the individual is no longer eligible to perform the duties of a juvenile probation ~~[or supervision]~~ officer, juvenile supervision officer or youth activities supervisor.

(d) Suspended. An officer who is currently under an order of suspension is not eligible for certification by the Commission and shall not perform the duties of a certified officer. A suspension order shall be in effect until the date determined in the disciplinary hearing held by the Commission. In the event of suspension for failure to pay child support under §232.003 of the Texas Family Code, the suspension shall remain in effect until the Commission receives an order staying or vacating the suspension.

(e) Revoked. An officer who has had a certification revoked by lawful authority of the Commission is no longer eligible for employment or certification as a juvenile probation officer, ~~or~~ juvenile supervision officer or youth activities supervisor.

#### §344.850. *Employment by a Governmental Unit.*

A juvenile probation officer, ~~or~~ juvenile supervision officer or youth activities supervisor with a certification issued by the Commission under this chapter shall be employed by a governmental unit or a private provider under a contract with a governmental unit to maintain active status. The Commission shall place the officer's certification on inactive status.



tive status upon receiving notification from the governmental unit of the individual's resignation or termination from employment.

**§344.860. Certification Process.**

(a) **Submission of Applications.** All certification applications shall be submitted through the Commission's automated certification information system.

(1) **Chief Administrative Officers.** The juvenile board or designee shall review the certification documentation and approve in writing the submission of the certification application for a chief administrative officer prior to submission of the application to the Commission.

(2) **Facility Administrators.** The juvenile board or the chief administrative officer shall review the certification documentation and approve in writing the submission of the certification application for a facility administrator prior to submission of the application to the Commission.

(3) **Juvenile Probation Officer.** The chief administrative officer or designee shall submit the certification application for a juvenile probation officer.

(4) **Juvenile Supervision Officer and Youth Activities Supervisor.** The chief administrative officer, facility administrator, or designee shall submit the certification application for a juvenile supervision officer or youth activities supervisor.

(b) **Timeline for Submission.** The certification application shall be submitted to the Commission no more than 180 calendar days from the date of initial employment.

(1) An individual whose application for certification has not been submitted within this time frame:

(A) shall not perform the duties of a certified officer; and

(B) shall not count toward the program's staff to child ratios.

(2) An extension of up to 90 days may be allowed for part time staff who have not completed the required training.

(c) **Valid Criminal History Searches.** Criminal history searches shall have been completed within 180 days prior to submission of the initial certification or certification renewal application. Dates of return shall be included in the application.

(d) **Approval of Applications.** The Commission shall review information contained in an application to determine certification eligibility. The Commission shall reserve the right to request additional information or documentation. The juvenile probation department will be notified of certification decisions through the Commission's automated certification information system. Any officer whose application is denied shall not perform the duties of a certified officer.

(e) **Training Documentation.** The juvenile probation department shall utilize the Commission's training and tracking system or an equivalent automated system to document training and continuing education received by certified officers. Training information shall be included in the certification application and submitted through the Commission's automated certification system.

**§344.880. Transfer or Reactivation of Certification.**

(a) The employing juvenile justice program or facility shall request through the Commission's automated certification system that an officer's certification be transferred or reactivated when an officer is hired who is:

(1) currently certified and employed in another juvenile justice program or facility; or

(2) returning from inactive status.

(b) The request for transfer shall include verification that all criminal history searches have been completed in accordance with §344.300 of this chapter.

(c) The department shall include ~~included~~ documentation in the officer's personnel file to confirm that training required to maintain certification has been completed within the required time frames.

(1) The juvenile board, chief administrative officer, facility administrator, or designee shall forward a copy of the officer's training records to the employing program or facility upon request.

(2) The officer shall provide documentation of any additional training received during a period of inactive certification.

(3) Training required to reactive certification shall be completed within 180 days of employment.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa A. Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

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For further information, please call: (512) 424-6710



## CHAPTER 349. GENERAL ADMINISTRATIVE STANDARDS

### SUBCHAPTER C. DISCIPLINARY ACTIONS AND HEARINGS

#### 37 TAC §349.300

The Texas Juvenile Probation Commission proposes an amendment to §349.300, concerning disciplinary actions and hearings. This amendment is being proposed in an effort to ensure that local probation departments are informed of any report that a certified officer might have violated a provision of the TJPC Code of Ethics. A local department that is notified of an allegation of misconduct can evaluate the report, investigate the circumstances and take appropriate action to make sure that the concern about the certified officer's conduct is properly addressed.

Lisa Capers, Deputy Executive Director and General Counsel, has determined that for the first five-year period the rules are in effect, there will no fiscal impact for state or local government as a result of enforcement and implementation. For the first five-year period that the rules are in effect, there would be no fiscal implications as a result of enforcement or implementation for small businesses or individuals.

Ms. Capers has also determined that for each year of the first five years the rules are in effect, the public benefit expected as a result of enforcement or implementation will be an improved procedure to provide notifications to all involved in disciplinary actions filed against certified officers. The addition to the standard

clarifies notification provisions so that all involved in the disciplinary process will be informed of the status of the proceedings.

Public comments on the proposed rules may be submitted in writing to Kristy Almager at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711-3547. Comments may also be submitted electronically to *Kristy.Almager@tjpc.state.tx.us* or faxed to (512) 424-6718.

This amendment is proposed under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affected by this amendment.

*§349.300. Requests for Disciplinary Action.*

- (a) (No change.)
- (b) Public Requests.

(1) Code of Ethics Violations. In the event the Commission receives notice in any manner from a member of the public that a Certified Officer has violated the code of ethics, the Commission shall notify in writing the local juvenile board and, provided the alleged violation does not involve the chief administrative officer or facility administrator, shall also notify in writing the chief administrative officer or facility administrator. The Commission shall provide this notice to the chief administrative officer or facility administrator no later than three (3) working days from receipt of the report of an alleged violation. Upon receipt of notification from the Commission, the chief administrative officer, facility administrator or the juvenile board shall conduct an internal investigation, which shall be forwarded to the Commission upon completion.

(2) Criminal Conduct. In the event the Commission receives notice from a member of the public that a Certified Officer has been convicted of or received deferred adjudication for any offense listed under §344.400 of this title, the Commission shall notify in writing the local juvenile board and, provided the alleged violation does not involve the chief administrative officer or facility administrator, shall also notify in writing the chief administrative officer or facility administrator. Upon receiving notice from the Commission, the facility administrator, chief administrative officer or juvenile board shall investigate and, if disqualifying criminal history exists, shall request disciplinary action in accordance with subsection (a)(2) of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## CHAPTER 355. NON-SECURE JUVENILE CORRECTIONAL FACILITIES

The Texas Juvenile Probation Commission proposes new Chapter 355, §§355.100, 355.102, 355.104, 355.106, 355.108, 355.110, 355.200, 355.202, 355.204, 355.206, 355.208,

355.210, 355.212, 355.214, 355.216, 355.218, 355.220, 355.222, 355.224, 355.226, 355.228, 355.300, 355.302, 355.304, 355.306, 355.308, 355.310, 355.312, 355.314, 355.316, 355.318, 355.320, 355.322, 355.324, 355.326, 355.328, 355.330, 355.332, 355.334, 355.336, 355.338, 355.340, 355.342, 355.344, 355.346, 355.348, 355.350, 355.352, 355.354, 355.356, 355.400, 355.402, 355.404, 355.406, 355.408, 355.410, 355.412, 355.414, 355.416, 355.418, 355.500, 355.502, 355.504, 355.506, 355.508, 355.510, 355.512, 355.514, 355.516, 355.518, 355.520, 355.522, 355.524, 355.526, 355.528, 355.530, 355.532, 355.534, 355.536, 355.538, 355.540, 355.542, 355.544, 355.546, 355.548, 355.550, 355.552, 355.554, 355.556, 355.558, 355.560, 355.562, 355.564, 355.566, 355.568, 355.570, 355.572, 355.574, 355.576, 355.578 and 355.580, concerning non-secure juvenile correctional facilities. These rules are being proposed in an effort to comply with §51.126 of the Texas Family Code and House Bill 3689, adopted by the 81st Texas Legislature, authorizing the Commission to develop non-secure correctional facility standards.

Lisa Capers, Deputy Executive Director and General Counsel, has determined that for the first five-year period the new rules are in effect, there will be a wide range of fiscal implications for state or local government as a result of enforcement and implementation depending on the existence of physical plant and staffing requirements. For the first five-year period that the new rules are in effect, there could also be significant fiscal implications as a result of enforcement or implementation for small businesses or individuals who choose to operate a non-secure correctional facility in order to comply with these new rules. Factors involve the number of staff and the certification requirements as well as various physical plant issues that may affect the fiscal implications.

Ms. Capers has also determined that for each year of the first five years the rules are in effect, the public benefit expected as a result of enforcement or implementation will be having a standardized accountability system in place for non-secure correctional facilities in order to rehabilitate a juvenile offender while maintaining safety in the community as well as within the facilities.

Public comments on the proposed rules may be submitted in writing to Kristy Almager at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711-3547. Comments may also be submitted electronically to *Kristy.Almager@tjpc.state.tx.us* or faxed to (512) 424-6718.

### SUBCHAPTER A. GENERAL PROVISIONS

#### 37 TAC §§355.100, 355.102, 355.104, 355.106, 355.108, 355.110

The new rules are proposed under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affected by these rules.

#### §355.100. Purpose.

The purpose of this chapter is to establish minimum operational and programmatic standards for non-secure correctional facilities in Texas.

#### §355.102. Certification and Registration of Facility.

Before admitting residents, the governing board in the county where the facility is located, shall:

- (1) certify the non-secure correctional facility is in compliance with §51.126 of the Texas Family Code;
- (2) indicate the number of beds in the facility certification;
- (3) register the facility with the Commission in compliance with §51.126 of the Texas Family Code; and
- (4) post within a public area of the facility the current facility certification and the Commission's facility registration.

§355.104. Interpretation and Applicability.

(a) Headings. The headings in this chapter are for convenience only and are not intended as a guide to the interpretation of the standards in this chapter.

(b) Including. The word "including", when following a general statement or term, is not to be construed as limiting the general statement or term to any specific item or manner set forth or to similar items or matters, but, rather, as permitting the general statement or term to refer also to all other items or matters that could reasonably fall within its broadest possible scope.

(c) Applicability. This chapter applies to all non-secure correctional facilities in this state, except for a facility operated or certified by the Texas Youth Commission. This chapter does not apply to a facility that is licensed by a state governmental entity or that is exempt from licensure by state or federal law. Furthermore, all standards requiring written policies and procedures are expected to be implemented and practiced.

(d) Compliance Resource Manual and Implementation of Agency Policy. The Commission may establish by administrative rule or other reasonable agency policy, the required guidelines, procedures, and documentation necessary to ensure compliance and verification of the standards set forth in this chapter.

§355.106. Definitions.

The following words and terms when used in this chapter shall have the following meanings, unless otherwise expressly defined within the chapter.

(1) Chief Administrative Officer--Regardless of title, the person hired by a governing board who is responsible for oversight of the day-to-day operations of a juvenile probation department for a single county or a multi-county judicial district.

(2) Commission--The Texas Juvenile Probation Commission (TJPC).

(3) Contraband--Any item not issued to employees for the performance of their duties and which employees have not obtained supervisory approval to possess. Contraband also includes any item given to a resident by an employee or other individual, which a resident is not authorized to possess or use. Specific items of contraband include, but are not limited to:

- (A) firearms;
- (B) knives;
- (C) ammunition;
- (D) drugs;
- (E) intoxicants;
- (F) pornography; and

(G) any unauthorized written or verbal communication brought into or taken from an institution for a resident, former resident, associate of or family members of a resident.

(4) Date and Time of Admission--The date and time that a juvenile has been admitted into a non-secure correctional facility.

(5) Designee--The person authorized to perform a specific duty as assigned by the facility administrator.

(6) Discipline--Guidance that is constructive or educational in nature and is appropriate to the resident's age, development, situation and severity of behavior.

(7) Facility Administrator--The individual designated by the chief administrative officer or governing board of the facility who has the ultimate responsibility for managing and operating the facility. This definition includes the certified juvenile supervision officer or non-secure residential worker who is designated in writing as the acting facility administrator during the absence of the facility administrator.

(8) Governing Board--Any governmental unit as defined in §101.001 of the Texas Civil Practice and Remedies Code that operates a non-secure correctional facility, including but not limited to a juvenile board.

(9) Hazardous Material--Any substance that is explosive, flammable, combustible, poisonous, corrosive, irritating or otherwise harmful and is likely to cause injury or death.

(10) Health Care Professional--A term that includes physicians, physician assistants, nurses, nurse practitioners, dentists, medical assistants, emergency medical technicians (EMT), and others who, by virtue of their education, credentials and experience, are permitted by law to evaluate and care for patients.

(11) Health Service Authority--The agency, organization or entity primarily composed of health care professionals or an individual health care professional that consults and collaborates with the facility administrator and/or the health services coordinator to ensure a coordinated and adequate health care system is available to residents of the facility.

(12) Housing Area--An area within the non-secure correctional facility that contains resident housing units.

(13) Housing Unit--A unit within the housing area that may be designed and constructed as either a single occupancy housing unit (SOHU) or a multiple occupancy housing unit (MOHU).

(14) Intensive Physical Activity Component--Any program or component that requires participants to engage in and perform strenuous physical training and activity. This does not include recreational team activities or activities related to the educational curriculum (i.e., physical education).

(15) Intra-Jurisdictional Custodial Transfer--The transfer of a resident from a pre-adjudication or post-adjudication secure facility into a non-secure correctional facility under the same administrative authority.

(16) Isolation--The segregation of a resident from other residents and the placement of the resident alone in an area for medical or protective purposes.

(17) Juvenile--A person who is under the jurisdiction of the juvenile court, confined in a juvenile justice facility, or participating in a juvenile justice program administered or operated under the authority of the juvenile board.

(18) Juvenile Supervision Officer--A person whose primary responsibility and essential function is the supervision of

juveniles in a juvenile justice facility, or a juvenile justice program operated by or under contract with the governing board.

(19) Material Safety Data Sheet (MSDS)--A document prepared by the supplier or manufacturer of a product clearly stating its hazardous nature, ingredients, precautions to follow, health effects and safe handling/storage information.

(20) Medical Treatment--Medical care, other than routine examinations, including diagnostic testing (e.g., x-rays, laboratory testing, etc.), performed or ordered by a physician, physician assistant or performed by a licensed nurse practitioner, emergency medical technician (EMT), paramedic or licensed vocational nurse (LVN) according to their respective licensure.

(21) Mental Health Paraprofessional--An individual who is able to perform tasks requiring significant knowledge, but without having the license or certification to perform at a professional level, including students, interns, fellows, post-doctorates, or other approved students in an official training program in psychology or a related field under the supervision of an authorized mental health professional.

(22) Mental Health Professional--An individual who has met the educational requirements and is licensed or certified by one or more of the following governmental entities:

(A) Texas State Board of Examiners of Psychologists;

(B) Texas State Board of Examiners of Professional Counselors;

(C) Texas State Board of Examiners of Marriage and Family Therapists;

(D) Texas Department of State Health Services;

(E) Texas Medical Board;

(F) Texas State Board of Social Worker Examiners provided that the licensure is Licensed Clinical Social Work; or

(G) Texas State Board of Social Worker Examiners provided that the licensure is Licensed Master Social Work accompanied with written recognition by the board for independent practice.

(23) Mental Health Screening--A process that includes using a screening instrument approved by the Commission designed to identify a resident who is at an increased risk of having mental health issues that warrant further review.

(24) Multiple Occupancy Housing Unit (MOHU)--A housing unit designed and constructed for multiple occupancy sleeping.

(25) Non-Program Hours--Time period when scheduled resident activity on the facility's premises has ceased for the day.

(26) Non-Secure Juvenile Correctional Facility--A facility, other than a secure correctional facility, that accepts juveniles who are on probation and that is operated by or under contract with a governmental unit, as defined by §101.001 of the Texas Civil Practice and Remedies Code.

(27) Non-Secure Residential Worker--A person who is responsible for the supervision, guidance, and protection of a juvenile in a non-secure correctional setting and is certified as a youth activities supervisor by the Commission when meeting the requirements under Chapter 344 of this title. This includes persons employed on a part-time, temporary or seasonal basis.

(28) Positive Screening--A scored result of a completed mental health screening instrument (i.e., MAYSI-2) recommending services requiring a primary service by a mental health professional as described on the MAYSI-2 reference card.

(29) Probation--For the purposes of this chapter, the period of time that a juvenile is placed under the jurisdiction of the juvenile court.

(30) Professionals--The following persons are considered to be professionals for the limited purposes of this chapter:

(A) teachers certified as educators by the State Board for Educator Certification, including teachers certified by the State Board for Educator Certification with provisional or emergency certifications;

(B) educational aides or paraprofessionals certified by the State Board for Educator Certification;

(C) health care professionals licensed or certified by:

(i) the Texas Board of Nursing;

(ii) the Texas Medical Board;

(iii) the Texas Physician Assistant Board;

(iv) the Texas Department of State Health Services;

or

(v) the Texas State Board of Dental Examiners;

(D) mental health professionals as defined in this section;

(E) qualified mental health professional as defined in this section;

(F) mental health paraprofessional as defined in this section;

(G) social workers licensed by the Texas Board of Social Worker Examiners;

(H) juvenile personnel certified by the Texas Juvenile Probation Commission; and

(I) commissioned law enforcement personnel.

(31) Program Hours--The time period when the resident population has scheduled facility activities.

(32) Program Staff--All full-time, part-time, temporary and seasonal staff, other than certified juvenile probation officers, certified juvenile supervision officers and certified youth activities supervisors, who are employed or contracted to perform program-related duties.

(33) Protective Isolation--The exclusion of a threatened resident from the group by placing the resident in an individual room that minimizes contact with the residents from a specific group.

(34) Qualified Mental Health Professional--An individual employed by the local mental health authority or an entity who contracts as a service provider with the local mental health authority who meets the guidelines of the Texas Department of State Health Services.

(35) Rated Capacity--The maximum number of beds available in a facility that were architecturally designed or redesigned as a housing unit.

(36) Resident--A juvenile who is placed in the non-secure correctional facility under the jurisdiction of the juvenile court.

(37) Restriction--The removal of a resident from program activities or other residents for behavior modification or minor disciplinary reasons for 60 minutes or less.

(38) Secondary Screening--A triage process that is brief and designed to clarify if a resident is in need of intervention or a more comprehensive assessment of the MAYSI-2 screening.

(39) Separation--The segregation of a resident from program activities or other residents because of major rule violations for 24 hours or less.

(40) Single Occupancy Housing Unit (SOHU)--A housing unit designed and constructed with separate and individual resident sleeping quarters.

(41) Volunteer--An individual who agrees to perform services without compensation and may have regular or periodic supervised contact with juveniles under the direction of the non-secure correctional facility.

(42) Youth Activities Supervisor--Regardless of title, an individual whose primary responsibility and essential job function is the supervision of youth who are participating in the activities of a juvenile justice program or non-secure facility.

(43) Youth-on-Youth Sexual Conduct--Two or more juveniles, regardless of age, who engage in deviate sexual intercourse, sexual contact, sexual intercourse, or sexual performance as those terms are defined in subparagraphs (A) - (D) of this paragraph:

(A) "Deviate sexual intercourse" means:

(i) any contact between any part of the genitals of one person and the mouth or anus of another person; or

(ii) the penetration of the genitals or the anus of another person with an object.

(B) "Sexual contact" means the following acts, if committed with the intent to arouse or gratify the sexual desire of any person:

(i) any touching by a person, including touching through clothing, of the anus, breast, or any part of the genitals of a person; or

(ii) any touching of any part of the body of a person, including touching through clothing, with the anus, breast, or any part of the genitals of a person.

(C) "Sexual intercourse" means any penetration of the female sex organ by the male sex organ.

(D) "Sexual performance" means acts of a sexual or suggestive nature performed in front of one or more persons, including simulated or actual sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sado-masochistic abuse or lewd exhibition of the genitals, the anus, or any portion of the female breast below the top of the areola.

(E) A juvenile may not consent to the acts as defined in this paragraph under any circumstances. Consent may not be implied regardless of the age of the juvenile.

§355.108. Waiver or Variance to Standards.

Unless expressly prohibited by another standard, the governing board or chief administrative officer may make an application for waiver and the governing board may make an application for variance of any standard or standards adopted by the Commission in accordance with §349.200 of this title.

§355.110. Acceptance of Residents.

A non-secure correctional facility may only accept and admit a child, as that term is defined in §51.02(2) of the Texas Family Code, who

is under the jurisdiction of the juvenile court and whose placement is authorized by law.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 28, 2011.

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Lisa A. Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

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For further information, please call: (512) 424-6710



## **SUBCHAPTER B. PHYSICAL PLANT**

**37 TAC §§355.200, 355.202, 355.204, 355.206, 355.208, 355.210, 355.212, 355.214, 355.216, 355.218, 355.220, 355.222, 355.224, 355.226, 355.228**

The new rules are proposed under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affected by these rules.

§355.200. Building and Operational Codes.

(a) The facility shall conform to all applicable federal, state and/or local ordinances and codes. Each facility shall have on file the most recent inspections conducted by the local governmental authority having jurisdiction.

(b) A formalized Life Safety Code/fire safety inspection shall be completed prior to the facility becoming operational.

(c) All subsequent Life Safety Code/fire safety inspections shall be conducted no later than 365 calendar days from the date of previous inspection.

(d) Each Life Safety Code/fire safety inspection shall result in a written report that minimally contains the following information:

(1) the name of the governmental entity that conducted the inspection;

(2) the identification of any applicable code violations or infractions and the corresponding corrective action requirements;

(3) the name and title of the person conducting the inspection; and

(4) the date(s) of the inspection.

(e) Any deficiencies noted in the annual inspection report shall be immediately addressed with the corrective action documented by the facility administrator or designee. If corrective action cannot be made within three working days, the facility administrator shall develop and document a corrective action plan to rectify deficiencies.

§355.202. Alternative Power Source.

(a) The facility shall have an alternate source(s) of electrical power that provides for the simultaneous operations of life safety systems including:

(1) emergency lighting;

- (2) illuminated emergency exit lights and signs;
- (3) emergency audible communication systems and equipment; and
- (4) fire detection and alarm system.

(b) The alternate power source system shall be tested at least every 15 calendar days to ensure the system is in working condition.

(c) The alternate power source shall be inspected at least every 365 calendar days. This inspection must be completed by a person with qualifications established by one of the following:

- (1) work experience;
- (2) relevant training;
- (3) specialized licensure; or
- (4) certification.

(d) All of the aforementioned tests shall be documented to minimally include test date and test results.

(e) A written corrective action plan shall be developed within 15 calendar days of any system malfunctions or maintenance needs that are identified. Any immediate corrective actions taken shall be documented.

§355.204. Heating and Ventilation.

(a) The facility shall provide fully functioning heating, cooling and ventilation systems adequate for the square footage of the facility.

(b) Alternate means of ventilation in the facility shall be maintained in case regular power is interrupted.

§355.206. Rated Capacity.

The population of the facility shall not exceed the rated capacity of the facility.

§355.208. Secure Storage of Restraint Devices.

There shall be a location for secure storage of restraint devices and related security equipment. This equipment shall be readily accessible to authorized persons.

§355.210. Single Occupancy Housing Units--SOHU.

(a) SOHUs shall be constructed to contain no more than 24 beds in each housing unit.

(b) Individual resident sleeping quarters shall be utilized as single occupancy only, and, at no time, may more than one resident be placed in an individual resident sleeping quarter.

(c) Individual resident sleeping quarters shall contain a bed above floor level.

§355.212. Spatial Requirements--SOHU.

(a) Individual resident sleeping quarters shall have a minimum ceiling height of 7.5 feet.

(b) Individual resident sleeping quarters shall have a minimum of 60 square feet of floor space.

§355.214. Multiple Occupancy Housing Units--MOHU.

(a) MOHUs shall be designed to contain no more than 24 beds in each housing unit.

(b) MOHUs shall have one bed above floor level for every resident assigned to the unit.

(c) MOHUs shall contain residents of the same sex.

§355.216. Spatial Requirements--MOHU.

(a) MOHUs shall have a minimum ceiling height of 7.5 feet.

(b) MOHUs shall have a minimum of 35 square feet of unencumbered floor space per bed in the housing unit.

§355.218. Shower Facilities.

Residents shall have access to shower facilities with hot and cold running water within the non-secure correctional facility.

(1) Non-secure correctional facilities designed, constructed and in operation on or after May 1, 2011 shall contain one operable shower for every six beds.

(2) The facility shall have policies and procedures regarding residents' access to shower facilities and their supervision during the use of shower facilities.

§355.220. Toilet Facilities.

Residents shall have access to toilet facilities within the non-secure correctional facility.

(1) Non-secure correctional facilities designed, constructed and in operation on or after May 1, 2011 shall contain at least one operable toilet above floor level for every six beds in each housing area.

(2) Urinals may be substituted for up to one-half of the toilets in housing areas permanently designed as all-male units.

(3) The facility shall have policies and procedures regarding residents' access to toilet facilities and their supervision during the use of toilet facilities.

§355.222. Washbasins.

Residents shall have access to washbasins within the non-secure correctional facility.

(1) Non-secure correctional facilities designed, constructed and in operation on or after May 1, 2011 shall contain one operable washbasin for every 12 beds.

(2) The facility shall have policies and procedures regarding residents' access to washbasins and their supervision during the use of washbasins.

§355.224. Drinking Water.

(a) Residents shall have access to clean and fresh drinking water within the non-secure facility.

(b) The facility shall have policies and procedures regarding residents' access to drinking water and their supervision while accessing drinking water.

§355.226. Lighting.

(a) The facility shall have adequate artificial lighting in all areas of the facility.

(b) All housing units shall provide natural light from a source directly within the housing area.

§355.228. Exercise and Common Activity Areas.

(a) Exercise Area. The facility shall provide space for an exercise area.

(b) Activity Space. The facility shall provide ample and appropriate space for residents to participate safely in program activities.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 28, 2011.

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## SUBCHAPTER C. POLICIES AND PROCEDURES

**37 TAC §§355.300, 355.302, 355.304, 355.306, 355.308, 355.310, 355.312, 355.314, 355.316, 355.318, 355.320, 355.322, 355.324, 355.326, 355.328, 355.330, 355.332, 355.334, 355.336, 355.338, 355.340, 355.342, 355.344, 355.346, 355.348, 355.350, 355.352, 355.354, 355.356**

The new rules are proposed under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affected by these rules.

§355.300. Policy, Procedure, and Practice.

The facility shall have written policies and procedures governing the operation of all non-secure correctional facilities in the county. The policies, procedures, and practices of the facility shall include:

(1) a policy in the following areas strictly prohibiting:

(A) physical, sexual or emotional abuse, neglect or exploitation of a resident by any individual having contact with a resident of the facility;

(B) youth-on-youth sexual conduct between residents;

(C) violations of the juvenile supervision officer code of ethics and code of conduct as outlined in Chapter 345 of this title;

(D) violations of any professional code of ethics or conduct by any individual providing services to or having contact with residents of the facility; and

(2) a zero tolerance policy and practice regarding sexual abuse in accordance with the Prison Rape Elimination Act of 2003 that provides for administrative and/or criminal disciplinary sanctions.

§355.302. Designation and Qualifications of Facility Administrator.

(a) The chief administrative officer, the governing board of the facility or a designee shall appoint a single facility administrator for each non-secure correctional facility. The chief administrative officer may be the facility administrator.

(b) The facility administrator shall:

(1) have acquired a bachelor's degree conferred by a college or university accredited by an accrediting organization recognized by the Texas Higher Education Coordinating Board;

(2) have either:

(A) one year of graduate study in criminology, corrections, counseling, law, social work, psychology, sociology, or other field of instruction approved by the Commission; or

(B) one year of experience in full-time case work, counseling, or community or group work;

(i) in a social service, community corrections, or juvenile agency that deals with offenders or disadvantaged persons;

(ii) the Commission determines the kind of experience necessary to meet this requirement; and

(3) maintain an active Commission certification as a juvenile supervision officer.

§355.304. Duties of Facility Administrator.

(a) The facility administrator shall be responsible for the daily operations of the facility and shall maintain an office at the facility.

(b) The facility administrator shall designate an individual who is at least a certified youth activities supervisor to be in charge during his or her absence from the facility.

(c) The facility administrator shall develop, implement and maintain a policy and procedure manual for the facility and shall ensure the daily facility practice conforms to the policies and procedures detailed in the manual.

(d) The facility administrator shall review the facility's policy and procedure manual at least every 365 calendar days and maintain documentation of this review.

(e) The facility administrator shall make readily accessible the written policies and procedures manual to all staff.

(1) Documentation of acknowledgement of receipt of the policies and procedures by all staff shall be maintained in the staff personnel or training file.

(2) All changes or modifications to the policies and procedures manual shall be made available to all staff in a timely manner.

(f) The facility administrator shall ensure that all staff, including contract, temporary, seasonal or substitute employees, shall receive orientation training prior to performing the duties assigned to them.

(1) Documentation of staff orientation training and agendas shall be maintained in the personnel file or training file.

(2) Orientation training, at a minimum, shall be documented as required by the Commission and include the following topics:

(A) safety and security procedures, including but not limited to, fire drills and non-fire emergency preparedness plan;

(B) child abuse, neglect and exploitation identification and reporting as required by Chapter 358 of this title;

(C) incident reports;

(D) resident orientation handbook;

(E) behavior management system;

(F) transporting residents outside the facility;

(G) crisis intervention;

(H) distribution of medication;

(I) sexual harassment;

(J) restraint policy;

(K) resident grievance procedures; and

(L) job descriptions including duties and responsibilities of the assigned position.

(g) The facility administrator or designee shall ensure that current personnel records are maintained for each employee, which shall include:

(1) proof of age;  
(2) criminal history searches conducted as required by Chapter 344 of this title;

(3) the completed application for employment;  
(4) training records;  
(5) applicable personnel actions;  
(6) documentation of the employee's education transcripts;

and

(7) applicable documentation verifying Commission certification.

(h) The facility administrator or designee shall ensure that current records are maintained for each contract service provider, which includes:

(1) a copy of the contract between the service provider and the facility;

(2) criminal history searches required by Chapter 344 of this title; and

(3) documentation verifying the service provider's licensure.

(i) The facility administrator or chief administrative officer shall provide the presiding officer of the juvenile board or governing board of the facility with periodic updates on the operation of the facility, including the following information to be provided at least every quarter:

(1) facility population/capacity reports;

(2) number of serious incidents by category that occurred in the facility;

(3) number of resident restraints by type (i.e., personal, mechanical and chemical);

(4) number of injuries to residents requiring medical treatment; and

(5) number of injuries to staff requiring medical treatment.

(j) The facility administrator or chief administrative officer shall ensure the accurate and timely submission of statistical data to the Commission in an electronic format or other format as requested by the Commission.

(k) The facility administrator or chief administrative officer shall ensure that all individuals employed by the facility or who provide contracted services who have contact with residents are subjected to all required criminal history background checks as required by Chapter 344 of this title.

#### §355.306. Criminal History Searches.

All staff, including contract staff, shall have criminal history searches in accordance with Chapter 344 of this title.

#### §355.308. Volunteers and Interns.

Facilities utilizing a volunteer or internship program shall have written policies and procedures that contain the following components:

(1) a description of the authority, responsibility, and accountability of volunteers and interns who work with the department;

(2) the selection and termination criteria, including disqualification based on specified criminal history;

(3) the orientation and training requirements, including training on recognizing and reporting abuse, neglect, and exploitation;

(4) a requirement that volunteers and interns meet minimum professional requirements, when applicable; and

(5) a written volunteer and intern registry, log or other documentation that details all dates and times a volunteer or intern is present on the premises of the facility as well as the purpose of their visit.

#### §355.310. Restraint Definitions.

The following words and terms when used in this chapter shall have the following meanings unless otherwise expressly defined:

(1) Approved Mechanical Restraint Devices--A professionally manufactured and commercially available mechanical device designed to aid in the restriction of a person's bodily movement. The approved mechanical restraint devices shall be approved by the Commission. The following are Commission-approved mechanical restraint devices:

(A) Ankle Cuffs--Metal, cloth or leather band designed to be fastened around the ankle to restrain free movement of the legs;

(B) Anklets--Cloth or leather band designed to be fastened around the ankle or leg;

(C) Handcuffs--Metal devices designed to be fastened around the wrist to restrain free movement of the hands and arms;

(D) Plastic Cuffs--Plastic devices designed to be fastened around the wrist or legs to restrain free movement of hands, arms or legs;

(E) Waist Band--A cloth, leather, or metal band designed to be fastened around the waist used to secure the arms to the sides or front of the body; and

(F) Wristlets--A cloth or leather band designed to be fastened around the wrist or arm which may be secured to a waist belt.

(2) Approved Personal Restraint Technique--A professionally trained, curriculum-based and competency-based restraint technique that uses a person's physical exertion to completely or partially constrain another person's body movement without the use of mechanical restraints. The approved personal restraint technique shall be approved for use by the Commission.

(3) Mechanical Restraint--The application of an approved mechanical restraint device which restricts or aids in the restriction of the movement of the whole or a portion of an individual's body to control physical activity.

(4) Personal Restraint--The application of physical force alone, restricting the free movement of the whole or a portion of an individual's body to control physical activity.

(5) Physical Escort--Touching or holding a resident with a minimum use of force for the purpose of directing the resident's movement from one place to another. A physical escort is not considered a personal restraint.

(6) Protective Devices--Professionally manufactured devices used for the protection of residents or staff that do not restrict the movement of a resident. Protective devices are not considered approved mechanical restraint devices.

(7) Restraint--Application of an approved personal restraint technique, an approved mechanical restraint device, or a chemical restraint to an individual to restrict the individual's freedom of movement or to modify the individual's behavior.

#### §355.312. Requirements.

The use of restraints shall be governed by the following criteria:



(1) Restraints shall only be used by juvenile supervision officers and non-secure residential workers certified in the use of the approved personal restraint technique and trained in the use of applicable mechanical restraint devices;

(2) Prior to participating in any restraint, juvenile supervision officers, non-secure residential workers and program staff shall be trained in the use of the non-secure correctional facility's specific verbal de-escalation policies, procedures and practices;

(3) Restraints shall only be used in instances of threat of imminent self-injury, injury to others, or serious property damage;

(4) Restraints shall only be used as a last resort;

(5) Only the amount of force and type of restraint necessary to control the situation shall be used;

(6) Restraints shall be implemented in such a way as to protect the health and safety of the resident and others;

(7) Restraints shall be terminated as soon as the resident's behavior indicates that the threat of imminent self-injury, injury to others, or serious property damage has subsided;

(8) Restraints shall be administered in a manner specific or consistent to the approved personal restraint technique adopted by the facility; and

(9) Juvenile supervision officers and non-secure residential workers shall be re-trained in the approved personal restraint technique at least every 365 calendar days.

§355.314. Prohibitions.

Restraints that employ a technique listed in paragraphs (1) - (11) of this section are prohibited:

(1) Restraints used for punishment, discipline, retaliation, harassment, compliance, or intimidation;

(2) Restraints that deprive the resident of basic human necessities including restroom privileges, water, food and clothing;

(3) Restraints that are intended to inflict pain;

(4) Restraints that place a resident in a prone or supine position with sustained or excessive pressure on the back, chest or torso;

(5) Restraints that place a resident in a prone or supine position with pressure on the neck or head;

(6) Restraints that obstruct the airway or impair the breathing of the resident including a procedure that places anything in, on, or over the resident's mouth or nose;

(7) Restraints that interfere(s) with the resident's ability to communicate;

(8) Restraints that obstruct the view of the resident's face;

(9) Any technique that does not require the monitoring of the resident's respiration and other signs of physical distress during the restraint;

(10) Percussive or electrical shocking devices; and

(11) Non-ambulatory restraints.

§355.316. Documentation.

All restraints shall be fully documented and maintained. Written documentation regarding the use of restraints shall, at a minimum, require:

(1) the name of resident;

(2) the staff member(s) name and title(s) who administered the restraint;

(3) the date of the restraint;

(4) the duration of the each type of restraint, including notation of the time the restraint began and ended;

(5) location where the restraint occurred;

(6) the description of preceding activities;

(7) the behavior that prompted the initial and the continued restraint of the resident;

(8) the type of restraint applied;

(A) the specific type of personal restraint hold applied; and

(B) any type of mechanical restraint device(s) applied.

(9) efforts made to de-escalate the situation and alternatives to restraint that were attempted; and

(10) whether or not any injury occurred during the restraint to the resident or staff and the description of the injury.

§355.318. Mechanical Restraint.

Mechanical restraints shall only be used by a certified juvenile probation officer, juvenile supervision officer or non-secure residential worker trained in their use.

§355.320. Serious Incidents.

All non-secure correctional facilities shall adhere to the requirements set forth in Chapter 358 of this title regarding serious incidents.

§355.322. Abuse, Neglect and Exploitation.

All non-secure correctional facilities shall adhere to requirements set forth in Chapter 358 of this title regarding abuse, neglect and exploitation.

§355.324. Weapons.

(a) The facility shall have written policies and procedures that prohibits staff, other than a law enforcement officer acting in the scope of his or her official duty, from the possession of a weapon as defined by §46.01 of the Texas Penal Code on the facility premises or at a facility-sponsored event.

(b) The facility's policies and procedures required in subsection (a) of this section shall prohibit a juvenile probation officer authorized to carry a firearm under the auspices of §142.006 of the Human Resources Code from entering the secure area of the facility with a firearm.

(c) Each non-secure correctional facility shall have a secure apparatus outside of the facility's housing area and area that is frequently occupied by residents to store weapons other than those described in subsections (a) and (b) of this section.

§355.326. Safety and Security.

(a) Security Plan. The facility shall have a written plan that addresses security:

(1) within the facility; and

(2) on and off facility premises.

(b) Transportation. The security plan shall include policies that govern the use of motor vehicles to transport residents and address the following:

(1) methods of transportation authorized;

(2) safety and supervision;

(3) authorized transport personnel;

- (4) emergency procedures;
- (5) the requirement of auto liability insurance when transporting in personal vehicles; and
- (6) circumstances under which residents will be allowed to drive a personal vehicle.

(c) Internal Security. The security plan shall address the facility's internal security with regard to the following:

- (1) continued operations in the event of a work stoppage;
- (2) key control;
- (3) control of the use of:
  - (A) tools;
  - (B) medical equipment; and
  - (C) kitchen tools;
- (4) provisions to prevent firearms from entering the facility; and
- (5) provisions for coordination with law enforcement authorities in the case of situations requiring assistance from city, county or state law enforcement agencies.

(d) Documentation.

(1) The facility administrator or designee shall ensure the documentation of all special incidents, where the health and safety of residents and/or staff were or could have been jeopardized.

(2) A copy of the report shall be placed in the permanent file of any resident(s) involved in the incident.

#### §355.328. Searches.

(a) The facility shall have written policies and procedures that address the following elements regarding resident searches:

- (1) when a search is appropriate and/or required;
- (2) who is authorized to conduct the search;
- (3) what types of searches are permissible;
- (4) how the searches will be conducted;
- (5) what to do when contraband is found; and
- (6) searches being conducted only by staff of the same sex as the resident.

(b) Upon intake, residents shall be subjected to only the following searches:

- (1) a pat down or frisk search as necessary for facility safety and security;
- (2) an oral cavity search to prevent concealment of contraband and to ensure the proper administration of medication;
- (3) a strip search in which the resident is required to surrender their clothing based on the reasonable belief that the resident is in possession of contraband or if there is reasonable belief that the resident presents a threat to the facility's safety and security:
  - (A) a strip search shall be limited to a visual observation of the resident and shall not involve the physical touching of a resident;
  - (B) a strip search shall be performed in an area that ensures the privacy and dignity of the resident; and
  - (C) a strip search shall be conducted by a staff member of the same gender as the resident being searched;

(4) an anal or genital body cavity search only if there is probable cause to believe that they are concealing contraband;

(A) an anal or genital body cavity search shall be conducted only by a physician. The physician shall be of the same gender as the resident, if available;

(B) all anal and genital body cavity searches shall be conducted in an office or room designated for medical procedures; and

(C) all anal and genital body cavity searches shall be documented with the documentation being maintained in the resident's file.

(c) During searches, the residents shall not be touched any more than necessary to conduct a comprehensive search.

(d) Every effort shall be made to prevent embarrassment or humiliation of the resident.

#### §355.330. Fire Safety Plan.

(a) The facility shall have in effect and available to all personnel, written copies of a fire safety plan for the protection of all persons in the event of a fire for their evacuation to areas of refuge and for their evacuation from the building, if necessary.

(b) The fire safety plan shall be coordinated with and reviewed by the fire department whose jurisdiction includes the facility. The coordination and review efforts required in this standard shall be validated by written documentation prepared or attested to by a representative of the applicable fire department.

(c) The fire safety plan shall require that all employees be instructed on the following:

- (1) proper disposal of combustible refuse;
- (2) prompt evacuation of the facility;
- (3) procedures for the use and control of flammable, toxic, and caustic materials;
- (4) emergency audible communication systems and equipment; and
- (5) fire detection and alarm systems.

#### §355.332. Fire Drills.

(a) Required Fire Drills. Fire drills shall be conducted on all shifts at least every 90 calendar days. The facility shall maintain documentation of the date, time and participating staff of each fire drill.

(b) Participation. All staff on duty in the facility shall participate in the fire drills.

(c) Exits. Facility exits shall be clear of obstruction and properly marked for evacuation in the event of fire or emergencies.

(d) Evacuation Plans. Facility emergency evacuation plans shall be posted.

#### §355.334. Non-Fire Emergency Preparedness Plan.

The facility shall have an emergency preparedness plan that includes, but is not limited to severe weather, natural disasters, disturbances or riots, national security issues, and medical emergencies. The plan shall address:

- (1) the identification of key personnel and their specific responsibilities during an emergency or disaster situation;
- (2) agreements with other agencies or departments; and
- (3) transportation to pre-determined evacuation sites.

§355.336. Hazardous Materials.

(a) The facility shall maintain an inventory and a copy of the Material Safety Data Sheet (MSDS) for all hazardous materials located in the facility.

(b) Materials manufactured for cleaning purposes or those used in the training process of a vocational training program or another program may be used by residents under the general supervision of a non-secure residential worker or a qualified program staff. The resident must be provided instruction on the use of the hazardous material and the proper equipment as prescribed by the MSDS.

(c) Any use of hazardous materials shall be used according to the manufacturer's instructions.

§355.338. Facility Maintenance, Cleanliness and Appearance.

(a) Housekeeping Plan. The facility shall have a written and implemented housekeeping plan for the maintenance of a clean and sanitary facility that promotes a safe environment for residents.

(1) The plan shall contain the following:

(A) a schedule for periodic and routine cleaning and housekeeping including:

(i) the identification of staff and resident responsibilities; and

(ii) the regular cleaning and disinfection of toilet and shower areas currently in use;

(B) a schedule for pest and vermin control; and

(C) a requirement for the weekly cleaning, safety, and maintenance inspection by facility staff of all areas of the facility that are currently in use.

(2) The housekeeping plan shall be accessible to facility staff.

(b) Maintenance. The facility administrator shall be responsible for ensuring that the interior physical plant, exterior grounds, and all equipment are in proper repair and safely functioning including, but not limited to, the following:

(1) repairs shall be made promptly to all furniture, fixtures, and equipment currently in use that are not in safe working order;

(2) all surfaces in facility areas currently being used shall be regularly maintained and repaired if damaged and reasonably free from graffiti and markings, excluding minor damage from reasonable and expected wear and tear from normal use; and

(3) all exterior grounds currently used for programmatic purposes or accessed by staff, residents or visitors are free from any health and safety hazards and are appropriately maintained to ensure the safe use by residents, staff and visitors.

(c) Cleanliness. All areas of the facility where residents reside or participate in programming or services shall be clean, sanitary and reasonably free from debris, rodents, insects and strong, offensive or foul odors.

§355.340. Experimentation and Research Studies.

(a) Experimentation. Participation by residents in medical, psychological, pharmaceutical, or cosmetic experiments is prohibited.

(b) Research Studies. Participation by residents in medical, psychological, pharmaceutical, or cosmetic research is prohibited unless the research study is approved in writing by the juvenile board subject to the following guidelines:

(1) The juvenile board shall promulgate approved policies that govern all authorized research studies. Studies that include medically invasive procedures shall be prohibited.

(2) Approved research studies shall adhere to all applicable policies of the authorizing juvenile board.

(3) Research studies approved by the juvenile board shall be reported to the Commission in a format prescribed by the Commission prior to the commencement of the study.

(4) The results of the study shall be made available to the Commission upon request from the facility administrator, chief administrative officer, or juvenile board.

(5) Policies governing research studies shall adhere to all federal requirements governing human subjects and confidentiality.

(6) Residents may voluntarily participate in approved research programs with the written consent of the resident's parent, guardian or custodian.

(7) A resident shall not be punished for not participating in any research study.

§355.342. Data Collection.

The facility administrator or chief administrative officer shall maintain and report to the Commission electronically, or in the format requested, accurate statistics in the following areas:

(1) total number of resident grievances;

(2) total number of personal restraint incidents;

(3) total number of mechanical restraint incidents;

(4) total number of chemical restraint incidents;

(5) total number of separations; and

(6) total number of injuries to facility staff resulting from interaction with residents.

§355.344. Classification Plan.

Facilities shall have a written classification plan that determines how residents are grouped in housing units. Residents shall, at a minimum, be classified for grouping by age, sex, offense, behavior, and any other considerations including a resident's potential vulnerabilities for sexual abuse that are discovered during the behavioral screening required in §355.352 of this chapter.

§355.346. Resident Records.

(a) Format and Maintenance of Records.

(1) Resident records shall be maintained in a uniform format for identifying and separating files.

(2) The facility shall have written policies and procedures to ensure the confidentiality of resident files.

(b) Content of Resident Records. Each resident's record shall include, at a minimum, the following:

(1) the court order and/or placement authorization documentation;

(2) a list of approved visitors;

(3) the name of the assigned probation officer;

(4) the behavioral record, including any special incidents, discipline, or grievances;

(5) emergency notification contacts;

(6) education records; and

(7) a physical as required by §355.570(b) of this chapter if the facility's programming includes an intensive physical activity component.

§355.348. Housing Records.

For each housing unit in the facility, the following documentation shall be maintained:

(1) a daily chronological log or electronic record documenting the resident's activity that identifies the non-secure residential worker(s) supervising the residents;

(2) a daily report of admissions and releases; and

(3) a population roster compiled as of 5:00 a.m. each day that shall include at a minimum:

(A) the date and time the roster was compiled;

(B) the name of all residents in the facility;

(C) the sex of all residents in the facility;

(D) the housing assignment location of all residents in the facility; and

(E) the numerical total of the resident population for each day.

§355.350. Disciplinary Reports.

(a) The facility shall have written policies and procedures that require juvenile supervision officers and non-secure residential workers to prepare a written disciplinary report for each incident occurring in the facility that constitutes a major rule violation. The policy shall require that the written disciplinary report include the details of the incident, the violation that occurred, action taken by the staff member(s), the date and time of the incident and the outcome.

(b) The disciplinary report shall be forwarded to the facility administrator within 24 hours or on the next working day. The date and time that the disciplinary report was forwarded shall be documented on the report.

§355.352. Behavioral Screening.

(a) Prior to admitting a juvenile into a non-secure correctional facility, the juvenile shall be screened for potential vulnerabilities or tendencies of acting out with sexually aggressive or assaultive behavior. Housing assignments shall be made accordingly.

(b) The behavioral screening shall take into consideration the following information, if readily available:

(1) age;

(2) current charge(s) and offense history;

(3) physical size/stature;

(4) current state of mind;

(5) sexual orientation;

(6) prior sexual victimization or abuse;

(7) level of emotional and cognitive development;

(8) physical disabilities;

(9) mental disabilities, including emotional, intellectual and developmental disabilities; and

(10) any other pertinent information.

§355.354. Personal Property.

If a resident's personal property is removed from the resident, the facility shall inventory and properly store the items taken. Documentation of the inventory shall be signed by the resident and the non-secure residential worker and maintained in the resident's file.

§355.356. Release Procedures.

Prior to the release of a resident from the facility, the authorized officer shall:

(1) verify the release authorization documents;

(2) verify the identity of the person receiving custody;

(3) secure a signed release by the individual receiving the resident's personal property;

(4) provide information to the person receiving custody regarding:

(A) all medication prescribed while the resident was in the facility that the resident is currently taking, and the name and contact information of the prescribing physician;

(B) any pending medical, mental health, or dental appointments;

(C) any present concerns regarding the resident; and

(5) secure a receipt signed by the person receiving custody.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa A. Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

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For further information, please call: (512) 424-6710



## **SUBCHAPTER D. RESIDENT HEALTH AND SAFETY**

**37 TAC §§355.400, 355.402, 355.404, 355.406, 355.408, 355.410, 355.412, 355.414, 355.416, 355.418**

The new rules are proposed under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affected by these rules.

§355.400. Mental Health Screening and Referral.

(a) Screening. A mental health screening instrument approved by the Commission shall be administered to each resident that is admitted into the non-secure correctional facility within two hours of admission.

(b) Referral. A resident who scores a positive screening on the screening instrument shall be:

(1) administered a secondary screening immediately to assist in clarifying the resident's need for mental health intervention;

(A) If the secondary screening confirms the positive screening and that mental health intervention is warranted, then a

referral shall be made to a mental health professional or licensed physician within two hours from the completion of the initial mental health screening.

(B) If the secondary screening substantiates that the initial positive screening was false, then no further mental health intervention is required; or

(2) referred to a qualified mental health professional for consultation within two hours from the completion of the initial mental health screening to determine if further mental health intervention is warranted.

(A) The facility shall maintain documentation of the consultation in the resident's file.

(B) If the qualified mental health professional recommends further mental health intervention is needed, then the resident must be referred to a mental health professional or licensed physician by the end of the program day.

(c) Documentation of recommendations or referrals specific to the juvenile's positive screening on the screening instrument shall be forwarded to the supervising juvenile probation officer.

(d) Documentation of referrals, completed assessments and evaluations, including dates and times, shall be retained in the resident's file and forwarded to the supervising juvenile probation officer.

#### §355.402. Suicide Prevention Plan.

(a) Plan. The facility shall have a written suicide prevention plan developed in consultation with a mental health professional that, at a minimum, addresses the following components:

(1) definitions of moderate and high risk for suicidal behavior;

(2) a screening methodology to assess and assign a resident's risk of suicide upon admission into the facility, and upon any indication a resident previously screened may now be at moderate or high risk for suicidal behavior. The screening methodology shall include specific provisions regarding the assessment of risk when a resident refuses or is unable to cooperate with the screening process;

(3) level of supervision for residents assigned to moderate or high risk for suicidal behavior;

(4) communication protocols among facility staff, mental health professionals, the resident's juvenile probation officer, the resident and the resident's parent, legal guardian, or custodian, including communication regarding observations or indications a resident previously screened may now be at moderate or high risk for suicidal behavior;

(5) policies and procedures for intervening in suicide attempts;

(6) reporting of resident suicides and attempted suicides, in accordance with any applicable state law, administrative standard, or local policy or ordinance;

(7) staff training on the contents and implementation of the suicide prevention plan;

(8) temporary housing of residents assigned to moderate or high risk for suicidal behavior, including the removal from the resident's presence any dangerous objects which may include clothing and bedding items; and

(9) mortality reviews designed to review the facility's compliance and possible needed revisions to the suicide prevention plan following a resident's suicide.

(b) Implementation. The facility shall implement the suicide prevention plan, and all residents shall be screened and assessed for suicide risk upon admission and as necessary thereafter.

#### §355.404. Transfer, Release and Referral of High Risk Suicidal Youth.

(a) If a resident is classified as a high risk for suicidal behavior, the facility shall immediately notify the sending agency for prompt transfer or release.

(1) Upon the recommendation of the sending agency, the facility shall transfer or release the resident as soon as possible.

(2) Documentation of this notification shall be maintained including the date, time, name and jurisdiction of the juvenile probation officer notified.

(b) If prompt transfer or release is not possible, the facility shall refer the resident classified as a high risk for suicidal behavior to a mental health professional or mental health care facility for further assessment or intervention. If this referral occurs, the facility shall maintain written documentation that includes:

(1) the name and title of the mental health professional or mental health care facility notified;

(2) the date and time of the referral;

(3) the method of referral; and

(4) a brief description of the response provided by the mental health professional or the responsive document from the mental health professional.

#### §355.406. Supervision of High Risk Suicidal Youth.

(a) Supervision. Residents classified as a high risk for suicidal behavior who are awaiting transfer or release by a juvenile probation officer or an assessment by a mental health professional as described in §355.404(b) of this chapter shall be:

(1) provided constant, uninterrupted supervision by a certified juvenile probation officer, certified juvenile supervision officer or certified youth activities supervisor; and

(2) the supervising officer shall document his or her personal observations of the high-risk resident at intervals not to exceed 30 minutes.

(b) Required Documentation. The following documentation shall be maintained for high-risk suicidal residents:

(1) the date and time the resident was classified as a high risk for suicidal behavior;

(2) name and title of the person who classified the resident as high risk for suicidal behavior;

(3) a description of the resident's behavior and/or factors that led up to the resident's classification as high risk for suicidal behavior;

(4) name of the non-secure residential worker providing supervision of the resident;

(5) the location of the resident's supervision;

(6) the date and time that the resident's juvenile probation officer was contacted regarding the high-risk classification for transfer or release; and

(7) name of person who contacted the resident's juvenile probation officer.

#### §355.408. Health Care Services.

(a) Health Service Authority. The facility shall designate a health service authority with which to consult when developing and implementing the health service plan.

(b) Health Service Plan. The facility shall have a written health service plan developed in consultation with the designated health service authority. The health service plan shall establish the facility's health care delivery system for all residents.

(c) Review of Health Service Plan. The health service plan shall be reviewed at least every 24 months in consultation with the health service authority.

§355.410. Medical.

(a) Mandatory Health Assessment. If a resident who is placed at a non-secure correctional facility as an alternative to detention and who has not had a health assessment by a health care professional within the 12 months immediately preceding admission into the facility, the resident shall be given a health assessment by a health care professional within 30 calendar days after admission into the facility.

(b) Pre-Admission Records. The facility shall have the following records prior to a resident's admission if the resident is placed at a non-secure correctional facility as a condition of probation or deferred prosecution agreement:

(1) A medical examination conducted by a health care professional within 30 calendar days prior to the resident's admission date.

(2) A psychological evaluation completed within 365 calendar days prior to the resident's admission.

(c) Consent for Medical Treatment.

(1) Consent for medical treatment shall be secured in accordance with Chapter 32 of the Texas Family Code.

(2) Documentation of consent for medical treatment shall be maintained in the applicable resident files.

(d) Health Screening.

(1) A health screening shall be conducted on each resident within two hours after admission by either a health care professional or an individual who has received specific training on administering the facility's health screening. The health screening instrument shall address:

(A) mental health problems;

(B) suicide risk assessment in accordance with the facility's suicide prevention plan;

(C) current state of health including:

(i) allergies;

(ii) tuberculosis;

(iii) other chronic conditions;

(iv) sexually transmitted diseases;

(v) history of gynecological problems or pregnancies; and

(vi) recent injuries at or near time of admission;

(D) current use of medication including type, dosage, and prescribing physician;

(E) visual observation of teeth and gums and notation of any obvious dental problems;

(F) vision problems;

(G) drug and alcohol use;

(H) physical or developmental disabilities;

(I) evidence of physical trauma; and

(J) the resident's weight.

(2) Intra-Jurisdictional Custodial Transfer. For intra-jurisdictional custodial transfer of residents, the only items required for the health screening at admission into a non-secure correctional facility are items enumerated in paragraph (1)(B) and (I) of this subsection.

(3) If the health screening indicates that a resident is in need of further medical evaluation, the resident shall be referred to a health care professional for further assessment within 24 hours, excluding weekends and holidays, from the date and time of the completed screening.

(4) In accordance with §142.005(a) of the Texas Human Resources Code, the facility shall have written policies and procedures governing the distribution of all medication to residents. The policy shall specify which personnel are authorized to dispense medication to residents.

(5) The facility shall have written policies and procedures governing the use and storage of prescription and non-prescription medications for residents.

(6) The resident's parent, guardian or custodian shall provide a written request for the administration of prescription medication that accompanies the resident upon admission. All prescription medication shall be in the original, properly labeled containers.

(7) The facility shall require in policies and practice that the distribution of all medication be documented including the date and time administered, name of person administering the medication, resident's name, type of medication and dosage.

(8) The facility's policies and practices shall require a medication log for over-the-counter medications distributed to the residents.

§355.412. Medical and Mental Health Services for Victims of Sexual Abuse.

(a) The facility shall make available medical and mental health services to juveniles who are victims of sexual abuse that occurred in the facility. These services include, but are not limited to, testing for sexually transmitted diseases, treatment for physical injuries and mental health issues that result from the sexual abuse.

(b) The cost of services or treatment identified under this standard shall not be assessed to the resident or the resident's parent, guardian or custodian.

§355.414. Medical Isolation.

Medical isolation may be authorized as a health precaution at the direction of a health care professional or the facility administrator.

(1) The reasons for the medical isolation of a resident shall be documented and a copy placed in the resident's file.

(2) A health care professional shall be consulted within 12 hours of the initial medical isolation for a resident that has been placed on medical isolation by a facility administrator.

(3) During medical isolation, non-secure residential workers shall personally observe and record the resident's behavior at random intervals not to exceed 15 minutes.

§355.416. First-Aid Kits.

Each facility shall have a first-aid kit available to the facility staff and shall be:

- (1) clearly labeled;
  - (2) kept in a clean and sanitary condition;
  - (3) easily accessible to all staff;
  - (4) stored in a designated location known to all employees;
- and
- (5) kept out of the reach of the residents.

§355.418. Supervision.

(a) Ratios. While on the facility premises, ratios for non-secure residential workers to residents shall adhere to the requirements set forth in this standard.

(1) Program Hours.

(A) Supervision Ratio. One juvenile supervision officer or non-secure residential worker to every twelve residents.

(B) Facility-Wide Ratio. One juvenile supervision officer or non-secure residential worker to every eight residents.

(2) Non-Program Hours.

(A) Supervision Ratio. One juvenile supervision officer or non-secure residential worker to every twenty-four residents.

(B) Facility-Wide Ratio. One juvenile supervision officer or non-secure residential worker to every twenty residents.

(b) Same-Sex Supervision Requirement.

(1) If both male and female residents are housed in the facility, at least one juvenile supervision officer or non-secure residential worker of each sex shall be on duty and available to the residents for every shift.

(2) Non-secure residential workers of one sex shall be the sole supervisors of residents of the same sex during showers, physical searches, pat downs, disrobing of suicidal youth, or during other times in which personal hygiene practices or needs would require the presence of a non-secure residential workers of the same sex.

(c) Level of Supervision.

(1) Program hours. The facility shall have written policies and procedures detailing the supervision requirements while residents are away from the facility premises.

(2) Small Groups. No more than six residents shall be supervised by a qualified individual when the individual is working with the residents in a capacity that relates to the individual's:

- (A) work experience;
- (B) relevant training;
- (C) specialized licensure; or
- (D) certification.

(3) Non-Program Hours.

(A) The facility shall have at least two juvenile supervision officers and/or non-secure residential worker on duty during non-program hours when there is at least one resident in the facility.

(B) A juvenile supervision officer and/or non-secure residential worker shall visually observe each resident at random intervals not to exceed 15 minutes in a SOHU.

(C) A juvenile supervision officer and/or non-secure residential worker shall have constant visual observation of residents in a MOHU and shall document general observations of dorm activity at intervals not to exceed 30 minutes.

(4) Non-secure residential workers shall document each visual observation made. The documentation shall include the time of the observation and generally describe the residents' behavior.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa A. Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

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## SUBCHAPTER E. RESIDENT RIGHTS AND PROGRAMMING

**37 TAC §§355.500, 355.502, 355.504, 355.506, 355.508, 355.510, 355.512, 355.514, 355.516, 355.518, 355.520, 355.522, 355.524, 355.526, 355.528, 355.530, 355.532, 355.534, 355.536, 355.538, 355.540, 355.542, 355.544, 355.546, 355.548, 355.550, 355.552, 355.554, 355.556, 355.558, 355.560, 355.562, 355.564, 355.566, 355.568, 355.570, 355.572, 355.574, 355.576, 355.578, 355.580**

The new rules are proposed under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affected by these rules.

§355.500. Resident Handbook.

(a) The written resident handbook shall be adopted by the governing board and shall include a clear explanation for the following topics:

- (1) the facility's behavior management system;
- (2) accessing available health care and services;
- (3) accessing available mental health care and services;
- (4) program rules with corresponding and maximum disciplinary sanctions;
- (5) the due process protections including the formal appeal process as required by §355.512 of this chapter;
- (6) grievance policies and procedures;
- (7) the process for visitation and telephone use;
- (8) the process for sending and receiving mail;
- (9) the right to access an attorney, including legal correspondence;
- (10) facility expectations regarding experimentation and research programs;
- (11) the right against:
  - (A) illegal discrimination;
  - (B) residents supervising other residents;

(C) degrading and purposeless work;

(12) the right to attend or refuse religious services;

(13) information required by the Prison Rape Elimination Act of 2003 including:

(A) prevention and intervention;

(B) methods of minimizing risk of sexual abuse;

(C) reporting sexual abuse and assault; and

(D) treatment and counseling;

(14) information regarding the reporting of suspected abuse, neglect, or exploitation of a child in a juvenile justice facility program;

(15) the right of confidentiality with regard to the items included in paragraphs (6), (13) and (14) of this subsection and the assurance that the resident will not face reprisal for participating in the procedures described in these items; and

(16) the facility's zero-tolerance policy regarding sexual abuse in accordance with the Prison Rape Elimination Act of 2003.

(b) The facility shall review the content of the resident handbook with each resident within four hours of admission into the facility and provide a copy of the resident handbook to the resident.

(1) The facility shall maintain a signed acknowledgment verifying that the resident understood the content of the resident handbook in the resident's file.

(2) If the resident is not sufficiently fluent in English, a verbal and written translation shall be provided to the resident in the resident's primary language within 48 hours of admission.

(c) The facility administrator shall conduct an annual review of the resident handbook every 365 calendar days.

§355.502. Behavior Management System.

The facility shall have written policies and procedures detailing the facility's behavior management system, which shall include but not be limited to the following:

(1) Disciplinary Sanctions. The facility's policies and procedures shall include the maximum sanctions that may be applied to residents for particular behaviors that violate the facility's program rules. The policies and procedures shall, at a minimum, include the following:

(A) a requirement that disciplinary procedures be carried out promptly and that all residents are afforded due process protections;

(B) a requirement that residents are at least one level of appeal on all discipline sanctions as required by §355.512 of this chapter;

(C) prohibited behaviors and conduct, including an indication of which are major rule violations;

(D) disciplinary consequences for prohibited behaviors and conduct;

(E) description of circumstances that will allow removal from program activities; and

(F) circumstances under which a resident may be placed into another setting.

(2) Prohibited Sanctions. The facility's policies and procedures shall contain the following prohibited sanctions:

(A) corporal punishment;

(B) humiliating punishment including verbal harassment of a sexual nature or that relates to a resident's sexual orientation or gender identity;

(C) allowing or directing one resident to sanction another;

(D) deprivation or modification of required meals and snacks;

(E) deprivation of clean and appropriate clothing;

(F) deprivation or intentional disruption of scheduled sleeping opportunities;

(G) deprivation or intentional delay of medical and mental health services; and

(H) physical exercises imposed for the purposes of compliance, intimidation, or discipline with the exception of practices allowed in §355.570 of this chapter.

(3) Notice.

(A) The facility's policies, procedures, and practices shall require that a resident be provided written notice of an alleged major rule violation against him or her no more than 24 hours after the knowledge of the violation.

(B) Documentation that the resident received the notice of an alleged major rule violation shall be maintained in the resident's file.

§355.504. Protective Isolation.

(a) Protective isolation may be ordered when a resident is physically threatened by a resident or a group of residents and approved in writing by the facility administrator or designee.

(b) A resident in protective isolation shall be in the least restrictive setting possible, allowing as much program time as possible while maintaining order and safety.

(c) While in protective isolation, non-secure residential workers shall observe and record the resident's behavior at random intervals not to exceed 15 minutes.

(d) If the protective isolation of a resident exceeds 24 hours, the facility administrator or designee shall immediately conduct a documented review of the circumstances surrounding the level of threat faced by the resident and make a determination as to whether other less restrictive protective measures are appropriate and available. If continued protective isolation is approved, the facility administrator or designee shall ensure that the formalized written review document includes an alternative service delivery plan to ensure the isolated resident is afforded all required program services during their period of protective isolation.

§355.506. Restriction.

(a) Restriction may be used in increments of up to 60 minutes for behavior modification or minor disciplinary reasons.

(b) When restriction is used, non-secure residential workers shall personally observe and record the resident's behavior at random intervals not to exceed 15 minutes.

§355.508. Separation.

(a) Separation may be used when a resident commits a major rule violation.

(b) When separation is used, a written disciplinary report that describes the resident's precipitating behavior and identifies the staff's



response shall be completed promptly, but no later than the end of the shift on which the separation occurs.

(c) Separation shall be approved in writing by the facility administrator and shall not be in excess of 24 hours.

(d) During separation, non-secure residential workers shall personally observe and record the resident's behavior at random intervals not to exceed 15 minutes.

(e) In addition to the requirements enumerated in subsections (b) - (d) of this section, the facility shall provide the secluded resident with an explanation of the disciplinary review process.

(f) Documentation required in this standard shall be maintained in the resident's file.

§355.510. Separation Prohibition.

Residents removed from facility programming or activities for disciplinary reasons shall not be placed in a locked area or room.

§355.512. Formal Appeals.

A resident may appeal a restriction or separation. The facility shall have written policies and procedures manual that include the provisions of a formal appeal. The provisions shall minimally include the following:

(1) provisions for a documented appeals process before a neutral and impartial person or persons not involved in administering the sanction. The appeals process shall afford each of the following due process provisions:

(A) provisions that require the resident to submit the request for an appeal no later than seven calendar days after a sanction; and

(B) provisions that require the resident's appeal to be heard within ten calendar days of resident's request; and

(2) provisions for a final disposition. A copy of the final disposition shall be retained in the resident's file.

§355.514. Discrimination.

Residents shall not be subjected to discrimination based on race, national origin, sex, sexual orientation, gender identity, or disability.

§355.516. Resident Grievance Process.

Written policies and procedures, as well as actual practices, shall demonstrate that there is a formalized grievance process to address residents' complaints about their treatment and facility services. At a minimum, the formalized grievance process shall include the following policy, procedural, and practice elements:

(1) The residents' ability to submit a grievance with full access to the process;

(2) A response and resolution to all grievances no later than five calendar days from the date the grievance is received by staff;

(3) Confidentiality of grievance without fear of reprisal;

(4) At least one level of appeal on all grievance complaints;

(A) The appeal shall be decided in a timely manner after receipt.

(B) The resident shall promptly be notified of the resolution of the appeal.

(5) The resident's ability to participate in the resolution of a grievance, including the use of an intermediary and the ability to request witnesses;

(6) Periodic formal reviews of the grievance process and dispositions by administrative-level staff;

(7) A tracking system and grievance log that accounts for all grievances submitted; and

(8) Unresolved grievances submitted by any resident who is released shall be forwarded to the facility administrator or designee to determine if any action is needed.

§355.518. Grievance Form.

The formal grievance form shall contain the following elements:

(1) the name of the resident;

(2) the resident's room;

(3) the date of the grievance;

(4) the nature or description of the grievance;

(5) the date and time of receipt;

(6) the name and title of the person receiving the grievance;

(7) the response or resolution to the grievance;

(8) the date and time of the response;

(9) the name and title of the person responding to the grievance; and

(10) a space for a written request to appeal the grievance response.

§355.520. Telephone.

(a) A resident shall be provided the opportunity for at least one five-minute phone call every seven calendar days.

(b) The parent, legal guardian, or custodian of the resident shall be provided a copy of the facility's policy regarding telephone usage.

(c) Restrictions on the minimum requirement of a resident's telephone usage shall not be imposed as a disciplinary sanction.

§355.522. Visitation.

(a) Residents have the right to receive visitors and the facility may limit a resident's rights only to the extent required to maintain safety within the facility.

(b) In accordance with §61.103 of the Texas Family Code, residents shall be allowed visitation by a parent, guardian or custodian and biological children, if applicable, at least once every seven calendar days for at least thirty minutes or the equivalent over multiple visits.

(c) The parent, guardian or custodian of the resident shall be provided a copy of the visitation schedule and with proper documentation an alternative visitation schedule allowing for employment and travel issues.

(d) A registry of all visitors shall be maintained to document the name and relationship to the resident.

§355.524. Limitations on Visitation.

(a) The policies, procedures, and practices of the facility may limit a resident's visitation rights only to the extent required to maintain safety within the facility. These policies and procedures shall be in accordance with §61.103 of the Texas Family Code.

(b) The facility administrator or designee shall provide written documentation justifying any restriction placed on a resident's visitation rights.

(c) A resident shall not be denied communication or visitation with a parent, guardian, or custodian for a prescribed period of time after admission into the facility.

(d) Restrictions on a resident's visitation rights shall not be imposed as a disciplinary sanction.

§355.526. Mail.

(a) Residents shall be provided access to writing materials and postage for no fewer than two letters every seven calendar days.

(b) When a resident is released or transferred from the facility, his or her mail shall be forwarded to the resident's new address or returned to the sender.

(c) Money received in the mail shall be held for the resident in their personal property inventory, with receipt provided to the resident, or returned to the sender.

§355.528. Inspection of Mail.

Mail may be opened by staff only in the presence of the resident with inspection limited to searching for contraband.

§355.530. Limitations on Mail.

(a) Authorized Limitations. A resident's rights to privacy and correspondence shall not be limited except when:

(1) a reasonable belief exists to suspect that the correspondence is a part of an attempt to formulate, devise, or otherwise effectuate a plan to violate state or federal laws. If such cause exists, then non-secure residential workers shall:

(A) ask the resident's permission to read the letter;

(B) if permission is denied, request a search warrant prior to opening and reading the letter;

(C) if a search warrant request is denied, the correspondence shall be provided to the resident;

(2) correspondence with certain individuals is specifically prohibited by:

(A) the resident's juvenile court-ordered rules of probation or parole;

(B) the facility's rules of separation; or

(C) a specific list of individuals furnished by a resident's parent, guardian or custodian indicating whom they feel should not communicate with the resident.

(b) Returning Mail. Such incoming correspondence as identified in subsection (a)(2) of this section shall be returned unopened to the sender.

(c) Withholding Mail. When mail is withheld from the resident, the reasons shall be documented and a copy placed in the resident's file.

§355.532. Legal Correspondence.

Residents shall be furnished adequate postage for legal correspondence during their stay in the facility.

§355.534. Personal Property.

The facility administrator shall ensure that there is adequate storage space for each resident's personal property.

§355.536. Personal Hygiene.

(a) Residents shall be given appropriate instruction on personal and oral hygiene and shall be provided necessary articles to maintain proper personal cleanliness.

(b) Residents shall be provided the opportunity to shower daily and after participating in strenuous exercise.

§355.538. Bedding.

(a) Each resident shall be provided clean and suitable bedding, including two sheets, a pillow and pillowcase, a mattress and a blanket. Mattresses with an integrated pillow may be substituted for a separate pillow and a pillowcase.

(b) Clean bed linens shall be issued at least every seven calendar days.

§355.540. Clothing.

(a) Residents shall have access to clean and appropriate clothing upon admission into the facility.

(b) Residents shall have clean and disinfected undergarments and socks daily and other clean clothing at least twice per week.

(c) Climate appropriate clothing shall be provided to all residents in the facility for any outdoor programming or activities.

§355.542. Towels.

A clean towel shall be issued to each resident daily.

§355.544. Meals.

(a) The facility shall have written policies and procedures ensuring the provision of meals for each resident in the facility.

(b) Residents shall not eat meals in their rooms unless it is necessary for facility safety.

(c) A resident shall not be denied a meal as a sanction or disciplinary measure.

§355.546. Daily Meal Schedule.

(a) Three meals shall be provided daily to each resident in the facility.

(b) At least two of the meals shall be hot.

(c) No more than 14 hours may elapse between the evening meal and breakfast unless a snack is provided.

(d) Residents shall be allowed no less than ten minutes to eat once they have received their food.

§355.548. Menu Plans.

(a) The facility shall develop and follow daily written menu plans. Menu plans shall be reviewed and approved at least every 365 calendar days by a licensed or provisionally licensed dietician to ensure that the menu plans meet or exceed the requirements of the United States Department of Agriculture (USDA).

(b) If a program staff determines that there is a legitimate need to deviate from an already approved written menu plan, such as food delivery problems, spoiled/expired food, etc., the reason for the deviation and menu substitution shall be fully documented. When menu substitutions are made, the substitution shall be of equal portions and nutritional value.

§355.550. Nutritional Requirements.

Menus shall contain a variety of foods that meet the dietary requirements of the United States Department of Agriculture (USDA).

§355.552. Modified Diets.

Modified diets shall be provided upon the recommendation of a health care professional or when a resident's religious beliefs require it.

§355.554. Staff Meals.

Staff members on duty where residents are eating are not required to eat, but if they do, they shall eat the same food served to the residents unless a special diet has been ordered by a health care professional or a staff's religious beliefs require it.

§355.556. On-site Food Preparation.

A facility that prepares food on-site shall maintain a valid permit and any required licenses issued by the local health department or the Texas Department of State Health Services.

§355.558. Off-site Food Preparation.

A facility that receives food from an off-site source shall maintain a copy of the source's valid permit and any required licenses issued by the local health department or the Texas Department of State Health Services. The transfer of such food to the facility shall be conducted in a manner to prevent contamination or adulteration.

§355.560. Educational Program.

If the educational program is on the facility premises, the facility administrator shall ensure the following:

(1) that all residents are required to participate. The educational program provided shall be administered in accordance with the Texas Education Code (TEC);

(2) that the education provider has access to residents so that the educational program is afforded to all residents, in accordance with the TEC;

(3) that residents shall be provided coursework that is aligned the Texas Essential Knowledge and Skills (TEKS), in accordance with the TEC;

(4) that the educational program provides for at least 180 days of instruction unless a waiver has been granted by the Texas Education Agency (TEA) for fewer days or the number of educational days coincides with the local school district calendar;

(5) that educational space is adequate to meet the instructional requirements for each resident for educational services provided on-site; and

(6) all educational staff shall receive a facility orientation prior to performing instructional duties at the facility. Orientation shall include:

- (A) security and safety procedures;
- (B) emergency procedures;
- (C) behavior management system and prohibited sanctions; and
- (D) reporting abuse, neglect and exploitation.

§355.562. Special Education.

(a) The facility administrator, through a cooperative effort with the Local Education Agency (LEA), shall ensure that residents with disabilities are provided a free and appropriate public education as determined by the Admission, Review and Dismissal (ARD) Committee in order to meet the individual educational needs of the resident as defined by federal and state laws.

(b) The facility administrator, through a cooperative effort with the LEA, shall ensure that residents with disabilities have available an instructional day commensurate with that of residents without disabilities, in accordance with requirements contained in 19 Texas Administrative Code §89.1075(d).

(c) The facility administrator or designee shall send notification of a resident placement in a non-secure correctional facility to the

LEA as required by §29.012 of the Texas Education Code and shall retain documentation of this notice.

§355.564. Supervision During Educational Program.

If the facility offers educational services on the premises, there shall be at least one non-secure residential worker to every 12 residents. Educational staff shall not be counted in staff-to-resident ratios.

§355.566. Reading Materials.

Age-appropriate reading materials shall be available to all residents.

§355.568. Recreation and Exercise.

(a) The recreational schedule for residents who are at the facility during program hours shall offer at least one hour of the following each day:

- (1) large muscle exercise; and
- (2) open recreational activity.

(b) Exceptions. A resident's recreational schedule may be altered under the following conditions:

- (1) participation by the resident is contra-indicated for medical reasons;
- (2) the resident is in separation, restriction, protective isolation, or medical isolation; or
- (3) extenuating circumstances exist that impede the recreational schedule.

(c) Recreational equipment and supplies shall be provided to the residents.

§355.570. Intensive Physical Activity Component.

(a) Governing Board Approval. Facilities shall have written authorization from the governing board prior to utilizing an intensive physical activity component.

(b) A resident shall not be permitted to participate in intensive physical activity without a copy of a physical performed by a licensed physician, licensed physician assistant, a registered nurse or doctor of chiropractic, which states that the resident has no physical limitations or conditions that would prohibit participation.

(c) A facility that has an intensive physical activity component shall develop written policies and procedures regarding extreme weather conditions that shall address the following:

- (1) gradual acclimatization to hot weather;
- (2) resident clothing for the various weather conditions; and
- (3) temperatures and weather conditions in which activity outside is not allowed.

(d) During the intensive physical activity period, the facility shall provide residents with a water break every 30 minutes.

(e) With the exception of certified physical education teachers, staff that participate in the administration of intensive physical activity shall be certified as a juvenile supervision officer.

(f) The facility shall have written policies and procedures, including guidelines, parameters, and limitations, on the types of physical activity that may be utilized for discipline or refocusing purposes (e.g., physical activities used to discipline for non-compliant behavior or as a substitute for write-ups or separations).

§355.572. Program Hours.

Each facility shall have a daily written program schedule outlining the planned activities during program hours for residents who are on the facility premises.

§355.574. Work by Residents.

(a) Residents may be required to perform the following types of work responsibilities without monetary compensation:

(1) assignments that are part of a formalized vocational training program;

(2) tasks performed as a community service; and

(3) routine housekeeping chores that are shared by all residents in the facility, including general facility maintenance.

(b) Residents shall not be permitted to perform any work prohibited by state or federal regulations pertaining to child labor.

(c) Repetitive, purposeless, or degrading make-work is prohibited.

(d) A resident's work assignments shall be excused or temporarily suspended if medically contra-indicated.

(e) Residents shall be provided with the necessary supervision, appropriate tools, cleaning implements, and clothing to safely and effectively complete their assignments.

(f) Residents shall not perform personal services for staff.

(g) Residents shall not perform any work that is unsafe or poses a known risk to the health and safety of the residents.

(h) Credit toward the completion of community service restitution shall be given according to the juvenile court's approval.

§355.576. Vocational Training Programs.

The facility administrator shall ensure that a vocational training program offered to residents, that is not administered by the local educa-

tion provider and through which no academic credit is gained, is administered by appropriately qualified persons to provide instruction or mentoring in the vocational skills.

§355.578. Religious Services.

Residents shall not be required to participate in religious services or religious counseling.

§355.580. Case Plans.

The facility shall participate with the sending juvenile probation department, the child and the child's parent, guardian or custodian in the development of the resident's case plan.

(1) The case plan shall be signed and dated by the participating facility representative, juvenile probation officer, child and child's parent, guardian or custodian.

(2) The facility shall maintain a copy of the signed and dated case plan in the resident's file.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 28, 2011.

TRD-201101204

Lisa A. Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Earliest possible date of adoption: May 8, 2011

For further information, please call: (512) 424-6710

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# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## TITLE 22. EXAMINING BOARDS

### PART 15. TEXAS STATE BOARD OF PHARMACY

#### CHAPTER 291. PHARMACIES

##### SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

###### 22 TAC §291.34

The Texas State Board of Pharmacy withdraws the proposed amendments to §291.34 which appeared in the March 25, 2011, issue of the *Texas Register* (36 TexReg 1950).

Filed with the Office of the Secretary of State on March 28, 2011.

TRD-201101212

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Effective date: March 28, 2011

For further information, please call: (512) 305-8028

## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 11. TEXAS JUVENILE PROBATION COMMISSION

#### CHAPTER 355. NON-SECURE JUVENILE CORRECTIONAL FACILITIES

##### SUBCHAPTER A. GENERAL PROVISIONS

###### 37 TAC §§355.100, 355.102, 355.104, 355.106, 355.108, 355.110

The Texas Juvenile Probation Commission withdraws the proposed new §§355.100, 355.102, 355.104, 355.106, 355.108, and 355.110 which appeared in the February 11, 2011, issue of the *Texas Register* (36 TexReg 729).

Filed with the Office of the Secretary of State on March 28, 2011.

TRD-201101190

Lisa A. Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Effective date: March 28, 2011

For further information, please call: (512) 424-6710

##### SUBCHAPTER B. PHYSICAL PLANT

###### 37 TAC §§355.200, 355.202, 355.204, 355.206, 355.208, 355.210, 355.212, 355.214, 355.216, 355.218, 355.220, 355.222, 355.224, 355.226, 355.228

The Texas Juvenile Probation Commission withdraws the proposed new §§355.200, 355.202, 355.204, 355.206, 355.208, 355.210, 355.212, 355.214, 355.216, 355.218, 355.220, 355.222, 355.224, 355.226, and 355.228 which appeared in the February 11, 2011, issue of the *Texas Register* (36 TexReg 732).

Filed with the Office of the Secretary of State on March 28, 2011.

TRD-201101191

Lisa A. Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Effective date: March 28, 2011

For further information, please call: (512) 424-6710

##### SUBCHAPTER C. POLICIES AND PROCEDURES

###### 37 TAC §§355.300, 355.302, 355.304, 355.306, 355.308, 355.310, 355.312, 355.314, 355.316, 355.318, 355.320, 355.322, 355.324, 355.326, 355.328, 355.330, 355.332, 355.334, 355.336, 355.338, 355.340, 355.342, 355.344, 355.346, 355.348, 355.350, 355.352, 355.354, 355.356

The Texas Juvenile Probation Commission withdraws the proposed new §§355.300, 355.302, 355.304, 355.306, 355.308, 355.310, 355.312, 355.314, 355.316, 355.318, 355.320, 355.322, 355.324, 355.326, 355.328, 355.330, 355.332, 355.334, 355.336, 355.338, 355.340, 355.342, 355.344, 355.346, 355.348, 355.350, 355.352, 355.354, and 355.356 which appeared in the February 11, 2011, issue of the *Texas Register* (36 TexReg 734).

Filed with the Office of the Secretary of State on March 28, 2011.

TRD-201101192

Lisa A. Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Effective date: March 28, 2011

For further information, please call: (512) 424-6710

SUBCHAPTER D. RESIDENT HEALTH AND SAFETY

37 TAC §§355.400, 355.402, 355.404, 355.406, 355.408, 355.410, 355.412, 355.414, 355.416, 355.418

The Texas Juvenile Probation Commission withdraws the proposed new §§355.400, 355.402, 355.404, 355.406, 355.408, 355.410, 355.412, 355.414, 355.416, and 355.418 which appeared in the February 11, 2011, issue of the *Texas Register* (36 TexReg 739).

Filed with the Office of the Secretary of State on March 28, 2011.

TRD-201101193

Lisa A. Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Effective date: March 28, 2011

For further information, please call: (512) 424-6710



SUBCHAPTER E. RESIDENT RIGHTS AND PROGRAMMING

37 TAC §§355.500, 355.502, 355.504. 355.506, 355.508, 355.510, 355.512, 355.514, 355.516, 355.518, 355.520,

355.522, 355.524, 355.526, 355.528, 355.530, 355.532, 355.534, 355.536, 355.538, 355.540, 355.542, 355.544, 355.546, 355.548, 355.550, 355.552, 355.554, 355.556, 355.558, 355.560, 355.562, 355.564, 355.566, 355.568, 355.570, 355.572, 355.574, 355.576, 355.578, 355.580

The Texas Juvenile Probation Commission withdraws the proposed new §§355.500, 355.502, 355.504. 355.506, 355.508, 355.510, 355.512, 355.514, 355.516, 355.518, 355.520, 355.522, 355.524, 355.526, 355.528, 355.530, 355.532, 355.534, 355.536, 355.538, 355.540, 355.542, 355.544, 355.546, 355.548, 355.550, 355.552, 355.554, 355.556, 355.558, 355.560, 355.562, 355.564, 355.566, 355.568, 355.570, 355.572, 355.574, 355.576, 355.578, and 355.580 which appeared in the February 11, 2011, issue of the *Texas Register* (36 TexReg 742).

Filed with the Office of the Secretary of State on March 28, 2011.

TRD-201101194

Lisa A. Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Effective date: March 28, 2011

For further information, please call: (512) 424-6710



# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 22. EXAMINING BOARDS

### PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

#### CHAPTER 505. THE BOARD

##### 22 TAC §505.10

The Texas State Board of Public Accountancy adopts an amendment to §505.10, concerning Board Committees, without changes to the proposed text as published in the February 4, 2011, issue of the *Texas Register* (36 TexReg 504) and will not be republished.

The amendment will reflect the consolidation of two (2) Technical Standards Committees into one (1) committee and clarify that the new committee can make recommendations to the board or the executive director.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2011.

TRD-201101176

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: April 13, 2011

Proposal publication date: February 4, 2011

For further information, please call: (512) 305-7842



### PART 30. TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS

#### CHAPTER 681. PROFESSIONAL COUNSELORS

## SUBCHAPTER N. PARENT COORDINATION AND PARENT FACILITATION

### 22 TAC §681.251, §681.252

The Texas State Board of Examiners of Professional Counselors (board) adopts new §681.251 and §681.252, concerning the licensing and regulation of professional counselors who serve as parent coordinators and parent facilitators, without changes to the proposed text as published in the December 31, 2010 issue of the *Texas Register* (35 TexReg 11786), and the sections will not be republished.

Sections 681.251 and 681.252 comply with House Bill 1012, 81st Legislature, 2009, codified as Family Code, Chapter 153. The sections address parent coordination and parent facilitation. Parent coordinators and parent facilitators are persons appointed by the court to aid the parties and the court in resolving parenting issues, within the limits of the court order of appointment. Parent coordinators are appointed in high conflict situations and report to the court only whether parent coordination should continue. Parent facilitators may deal with similar issues as a parent coordinator, but may report to the court recommendations regarding particular issues between the parties, but not recommendations regarding custody or visitation.

#### SECTION-BY-SECTION SUMMARY

Section 681.251 defines the duties and responsibilities of a parent coordinator and establishes certain prohibitions and requirements for a licensed professional counselor who serves as a parent coordinator.

Section 681.252 defines the duties and responsibilities of a parent facilitator and establishes certain prohibitions and requirements for a licensed professional counselor who serves as a parent facilitator.

#### COMMENTS

The board received the following comment concerning the proposed rules during the comment period, and the board's response follows the comment.

Comment: The commenter agreed with the rules, but asked that the board adopt continuing education requirements to go along with the new rules.

Response: The board disagrees. The board does not feel that, at this time, continuing education for Parent Coordination and Parent Facilitation, which operate under the direction and at the will of the courts, would be an asset to the licensees. The board may revisit the continuing education issue at a later time. No change was made as a result of the comment.

#### STATUTORY AUTHORITY

The new rules are authorized by Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of the board's duties; and Family Code, Chapter 153, which contains law concerning a parenting coordinator and facilitator.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 28, 2011.

TRD-201101214

Glynda Corley

Chair

Texas State Board of Examiners of Professional Counselors

Effective date: April 17, 2011

Proposal publication date: December 31, 2010

For further information, please call: (512) 458-7111 x6972



## **TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

### **PART 3. TEXAS YOUTH COMMISSION**

#### **CHAPTER 97. SECURITY AND CONTROL**

##### **SUBCHAPTER A. SECURITY AND CONTROL**

###### **37 TAC §97.47**

The Texas Youth Commission (TYC) adopts new §97.47, concerning Self-Referral to Security Unit, without changes to the proposed text as published in the January 14, 2011, issue of the *Texas Register* (36 TexReg 126).

The justification for the new rule is (1) protection from harm for TYC youth; (2) compliance with nationally recognized accreditation standards; (3) provision of a mechanism for youth to interrupt potentially escalating patterns of behavior; and (4) provision of individualized interventions and support to help youth to address temporary, situational stressors.

The new rule establishes service delivery and program requirements for youth who request temporary placement in security units at TYC's high restriction facilities.

TYC received comments from Advocacy Incorporated regarding the proposed rule. A summary of the comments, along with TYC's response, is below.

Comment: The rule should include a provision stating that a self-referral to the security unit will not interfere with a youth's ability to be released from TYC or advance to the next stage in the program.

Response: TYC agrees that a self-referral to the security unit is not, in and of itself, a justification for extending a youth's length of stay or denying or delaying advancement in the general rehabilitation program. As indicated by the proposed rule, there are valid reasons for youth to request temporary removal from the general population. However, decisions regarding advancement in stages and release from TYC involve many factors to be considered by decision makers. Such decisions are outside the scope of this rule, which is intended only to establish programming and service delivery requirements for youth who request self-referrals to the security unit. TYC has published other rules,

such as 37 TAC §85.57 and §87.3, which address the relevant factors to be considered in release and stage advancement decisions. No changes were made to the proposed text as a result of the comment.

The new rule is adopted under (1) Human Resources Code §61.034, which provides TYC with the authority to adopt rules appropriate to the proper accomplishment of its functions; and (2) Human Resources Code §61.045, which assigns TYC with responsibility for the welfare, custody, and rehabilitation of the children in a school, facility, or program operated or funded by the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 22, 2011.

TRD-201101145

Cheryl N. Townsend

Executive Director

Texas Youth Commission

Effective date: May 1, 2011

Proposal publication date: January 14, 2011

For further information, please call: (512) 424-6014



## **PART 11. TEXAS JUVENILE PROBATION COMMISSION**

### **CHAPTER 341. TEXAS JUVENILE PROBATION COMMISSION STANDARDS**

The Texas Juvenile Probation Commission (TJPC) adopts amendments to §§341.1; 341.3; and 341.28, concerning Texas Juvenile Probation Commission standards. The Texas Juvenile Probation Commission adopts the repeal of §§341.20; 341.21; 341.22; 341.23; and 341.30, also concerning Texas Juvenile Probation Commission standards. These amendments and repeals are adopted without changes as published in the February 11, 2011, issue of the *Texas Register* (36 TexReg 727) and will not be republished.

TJPC adopts these amendments and repeals in an effort to clarify certification requirements and ensure consistency with other chapters of agency standards.

No public comment was received during the official public comment period.

#### **SUBCHAPTER A. DEFINITIONS**

##### **37 TAC §341.1**

These amendments are adopted under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.



Filed with the Office of the Secretary of State on March 28, 2011.

TRD-201101195

Lisa A. Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Effective date: May 1, 2011

Proposal publication date: February 11, 2011

For further information, please call: (512) 424-6710



## **SUBCHAPTER B. JUVENILE BOARD RESPONSIBILITIES**

### **37 TAC §341.3**

These amendments are adopted under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 28, 2011.

TRD-201101196

Lisa A. Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Effective date: May 1, 2011

Proposal publication date: February 11, 2011

For further information, please call: (512) 424-6710



## **SUBCHAPTER E. EMPLOYMENT OF CERTIFIED JUVENILE PROBATION OFFICERS**

### **37 TAC §§341.20 - 341.23**

These repeals are adopted under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 28, 2011.

TRD-201101197

Lisa A. Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Effective date: May 1, 2011

Proposal publication date: February 11, 2011

For further information, please call: (512) 424-6710



## **SUBCHAPTER F. REQUIREMENTS FOR JUVENILE PROBATION OFFICERS**

### **37 TAC §341.28**

These amendments are adopted under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 28, 2011.

TRD-201101198

Lisa A. Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Effective date: May 1, 2011

Proposal publication date: February 11, 2011

For further information, please call: (512) 424-6710



### **37 TAC §341.30**

This repeal is adopted under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 28, 2011.

TRD-201101199

Lisa A. Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Effective date: May 1, 2011

Proposal publication date: February 11, 2011

For further information, please call: (512) 424-6710



## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES**

#### **CHAPTER 17. PILOT PROGRAM FOR MONITORING CERTAIN UNLICENSED LONG-TERM CARE FACILITIES**

**40 TAC §§17.101, 17.103, 17.105**

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts the repeal of Chapter 17, §§17.101, 17.103, and 17.105, Pilot Program for Monitoring Certain Unlicensed Long-Term Care Facilities, without changes to the proposal as published in the January 7, 2011, issue of the *Texas Register* (36 TexReg 27).

The repeal is adopted to remove rules regarding the Pilot Program for Monitoring Certain Unlicensed Long-Term Care Facilities from the DADS rule base. Senate Bill (SB) 6, 79th Legislature, Regular Session, 2005, directed the Executive Commissioner of HHSC to develop and implement a pilot program to identify and take certain actions related to long-term care facilities operating without licenses or in violation of their licenses. The pilot program expired on September 1, 2007, and the report required by SB 6 was submitted by HHSC to appropriate officials.

DADS received no comments regarding adoption of the repeal.

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of

services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 28, 2011.

TRD-201101215

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Effective date: April 17, 2011

Proposal publication date: January 7, 2011

For further information, please call: (512) 438-3734

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# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

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## Agency Rule Review Plan

Texas Commission on Law Enforcement Officer Standards  
and Education

Title 37, Part 7

TRD-201101247

Filed: March 30, 2011

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# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Office of the Attorney General

### Agreed Final Judgment and Permanent Injunction

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water and Health and Safety Codes. Before the State may settle a judicial enforcement action, pursuant to §7.110 of the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of Chapter 7 of the Texas Water Code.

Case Title and Court: *State of Texas v. AI Divestitures, Inc. Environmental Recycling Technologies, LLC, New Environmental Recycling Technologies, Inc. and John Sullivan*, Cause No. D-1-GV-06-001283 in the 53rd District, Travis County, Texas.

Background: This is a suit for enforcement of rules of the Texas Commission on Environmental Quality (TCEQ) concerning the handling, storage, processing, and disposal of industrial solid waste with potential discharge into the waters of the State at several sites in Laredo, Webb County, Texas.

Nature of Settlement: The proposed Agreed Final Judgment and Permanent Injunction (AFJ) settles all of the State's claims in the suit. The AFJ contains provisions for injunctive relief, civil penalties, and attorney's fees. The proposed judgment will require Defendant to perform the asphalt pavement project in accordance with the plan approved by TCEQ. The judgment awards the State attorney's fees of \$70,000.00 jointly and severally against all Defendants; cost recovery for a removal action of \$56,724.65 jointly and severally against all Defendants; and civil penalties of \$100,000.00 against AI Divestitures, Inc., of which \$50,000.00 will be paid toward a TCEQ Supplemental Environmental Project (SEP), and \$100,000.00 against Defendants Environmental Recycling Technologies, LLC, New Environmental Recycling Technologies, Inc., and John Sullivan jointly and severally, of which \$50,000.00 will be paid toward a TCEQ SEP.

The Office of the Attorney General will accept written comments relating to this proposed judgment for thirty (30) days from the date of the publication of this notice. Copies of the proposed judgment may be examined at the Office of the Attorney General, 300 W. 15th Street, 10th Floor, Austin, Texas. A copy of the proposed judgment may also be obtained in person or by mail at the above address for the cost of copying. Requests for copies of the judgment and written comments on the proposed judgment should be directed to Sarah Jane Utley, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911.

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201101217

Jay Dyer  
Deputy Attorney General  
Office of the Attorney General  
Filed: March 28, 2011



### Notice of Settlement of a Texas Water Code Enforcement Action

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code. Before the State may enter into a voluntary settlement agreement, pursuant to §7.110 of the Texas Water Code, the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title: *Mitsubishi International Corporation, et al., v. Texas Commission on Environmental Quality*, No. D-1-GN-09-002640; In the 98th Judicial District Court, Travis County, Texas.

Background: During 1992-1993, the Texas Commission on Environmental Quality ("TCEQ") conducted a partial cleanup (or "Removal Action") of the Archem/Thames Chelsea State Superfund Site, an approximately 10-acre tract at 13103 Conklin Lane in southeast Houston. In 2002-2004, the TCEQ conducted an extensive Remedial Investigation ("RI") of the Site. The Site was heavily contaminated with solid wastes and hazardous substances in the soil and groundwater, commingled with other organic chemicals and compounds. The TCEQ expended more than \$2 million on the Removal Action and RI, and expects to spend another \$1.7 million to complete the cleanup of the Site. On July 15, 2009, the TCEQ issued an administrative order styled "In the Matter of the Site Known as Archem/Thames Chelsea State Superfund Site, Docket No. 2008-1229-SPF" ("the Order"), finding that certain parties were responsible for solid waste or hazardous substances at the Site, providing for a cleanup, and other matters. Various parties appealed the Order; those appeals were consolidated into the above-referenced case in the district court.

Nature of the Settlement: The lawsuit will be settled by an agreed final judgment in the district court.

Proposed Settlement: The proposed judgment provides for the recovery of response costs and attorneys' fees.

The Office of the Attorney General will accept written comments relating to the proposed judgment for thirty (30) days from the date of publication of this notice. Copies of the proposed judgment may be examined at the Office of the Attorney General, 300 W. 15th Street, 10th Floor, Austin, Texas. A copy of the proposed judgment may also be obtained in person or by mail at the above address for the cost of copying. Requests for copies of the judgment, and written comments on the same, should be directed to Thomas H. Edwards, Assistant Attorney General, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548; telephone (512) 463-2012, fax (512) 320-0052.

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201101223

Jay Dyer

Deputy Attorney General

Office of the Attorney General

Filed: March 29, 2011

## Coastal Coordination Council

### Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of March 17, 2011, through March 23, 2011. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Coastal Coordination Council website. The notice was published on the website on March 31, 2011. The public comment period for this project will close at 5:00 p.m. on April 29, 2011.

#### FEDERAL AGENCY ACTIONS:

**Applicant: City of Corpus Christi;** Location: The project is located under the JFK Causeway in an area contiguous with the Laguna Madre (Packery Channel) in Corpus Christi, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Crane Islands, NW, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 674027; Northing: 3057881. Project Description: The applicant proposes to fill 2.86 acres of jurisdictional area that is currently used as a parking lot. Once graded, the applicant proposes to cap the filled area with asphalt. The purpose of the project is to prevent future erosion of the site and alleviate parking issues associated with high vehicular traffic usage over holidays, weekends, and tournament dates. CMP Project No.: 11-0289-F1 Type of Application: U.S.A.C.E. permit application #SWG-2010-00020 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

**Applicant: John Haywood;** Location: The project is located along the shoreline of the lower Laguna Madre, at the Queen Isabel Hotel, in Port Isabel, Cameron County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Isabel, Texas. Approximate: Latitude: 26.07782 North; Longitude: -97.20507 West. Project Description: The applicant proposes to modify Department of the Army Permit 19925(01) by extending the existing vertical shoreguard breakwater structure approximately 40 feet further east and continuing with a dogleg turn an additional 104 feet in a southeast direction. In addition, the applicant proposes to install a 20-foot-long section and a 10-foot-long section of shoreguard breakwater at the entrance into the existing boat slip area. The total length of proposed breakwater is 174 feet. The proposed breakwater will measure 2 feet wide along all proposed sections. The applicant states that the project is necessary to provide protection to boats utilizing the existing boat slips. Without the proposed work, the applicant stated that storm winds and waves will batter watercraft and existing improvements. The proposed breakwa-

ter addition will extend approximately 6 feet from the bay bottom, with approximately 3 feet of the structure located above the existing water line. CMP Project No.: 11-0292-F1 Type of Application: U.S.A.C.E. permit application #SWG-1997-02912 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Ms. Kate Zultner, Consistency Review Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or via email at [kate.zultner@glo.texas.gov](mailto:kate.zultner@glo.texas.gov). Comments should be sent to Ms. Zultner at the above address or by email.

TRD-201101187

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: March 28, 2011

## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/04/11 - 04/10/11 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/04/11 - 04/10/11 is 18% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

TRD-201101222

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: March 29, 2011

## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 9, 2011**. TWC, §7.075 also requires that the commission promptly consider any written comments received and

that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545, and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 9, 2011**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: AADARSH BUSINESS, INCORPORATED dba Red Rock Grocery; DOCKET NUMBER: 2010-1737-PST-E; IDENTIFIER: RN101496602; LOCATION: Red Rock, Bastrop County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 Texas Administrative Code (TAC) §334.50(b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the pressurized piping associated with the underground storage tanks (UST); PENALTY: \$1,754; ENFORCEMENT COORDINATOR: Bridgett Lee, (512) 239-2565; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(2) COMPANY: AKZO NOBEL SURFACE CHEMISTRY, LLC; DOCKET NUMBER: 2011-0120-UIC-E; IDENTIFIER: RN100219393; LOCATION: Houston, Fort Bend and Harris Counties; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §331.63(g) and Class I Underground Injection Permit Numbers WDW-111 and WDW-139, Section XI.E.2., by failing to conduct quarterly calibrations of underground injection control well monitoring equipment; PENALTY: \$7,237; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Benjamin Sanjuan dba Golden Carriage Mobile Home Park; DOCKET NUMBER: 2010-2050-UTL-E; IDENTIFIER: RN101255644; LOCATION: Harris County; TYPE OF FACILITY: public water system (PWS); RULE VIOLATED: 30 TAC §290.39(o)(1) and §291.162(a) and (j) and TWC, §13.1395(b)(2), by failing to adopt and submit to the executive director for approval by March 1, 2010, an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$535; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Boles Independent School District; DOCKET NUMBER: 2010-2048-MWD-E; IDENTIFIER: RN101554582; LOCATION: Hunt County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TCEQ Permit Number WQ0013837001, Effluent Limitations and Monitoring Requirements A, 30 TAC §305.125(1), and TWC, §26.121(a)(1), by failing to comply with pH permitted effluent limits from October 1, 2009 - September 30, 2010; TCEQ Permit Number WQ0013837001, Special Provisions (SP) Number 3, Operational Requirements Number 1, and 30 TAC §305.125(1), by failing to properly maintain and operate the treatment facility

in good working order to achieve optimum efficiency of treatment capability, TCEQ Permit Number WQ0013837001, SP Number 8, and 30 TAC §305.125(1), by failing to submit the results of the soil sample analyses from the irrigation area to the TCEQ regional office and to the Compliance Monitoring Team of the Enforcement Division by September of each year; and TCEQ Permit Number WQ0013837001, SP Number 2, and 30 TAC §30.350(d), by failing to employ or contract a licensed individual holding the appropriate level of license to operate the facility; PENALTY: \$9,200; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: City of Cisco; DOCKET NUMBER: 2010-1885-MWD-E; IDENTIFIER: RN102186533; LOCATION: Eastland County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014877001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations for biochemical oxygen demand (BOD); 30 TAC §305.125(1) and §319.5(b), and TPDES Permit Number WQ0014877001, Monitoring and Reporting Requirements Number 1, by failing to analyze samples; and 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0014877001 Sludge Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2010, by September 1, 2010; PENALTY: \$10,584; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(6) COMPANY: City of East Tawakoni; DOCKET NUMBER: 2010-1922-PWS-E; IDENTIFIER: RN102690310; LOCATION: Hunt County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.46(l), by failing to flush dead-end mains at regular monthly intervals; 30 TAC §290.46(d)(2)(B) and §290.110(b)(4), by failing to operate the disinfection equipment to continuously maintain a disinfectant residual of 0.5 milligrams per liter (mg/L) of chloramine throughout the distribution system at all times; 30 TAC §290.46(f)(3)(A)(vi), by failing to maintain maintenance records for water system equipment and facilities; 30 TAC §290.44(d)(5), by failing to provide sufficient valves and blowoffs within the distribution system so that necessary repairs can be made without undue interruption of service and for flushing the distribution system when required; 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan; 30 TAC §290.110(c)(4)(B), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once per day; 30 TAC §290.109(c)(1)(A), by failing to collect routine distribution coliform samples at active service connections; 30 TAC §290.46(d)(2)(B) and §290.110(b)(4), by failing to operate the disinfection equipment to continuously maintain a disinfectant residual of 0.5 mg/L of chloramine throughout the distribution system at all times; PENALTY: \$2,600; ENFORCEMENT COORDINATOR: Kelly Wisian, (512) 239-2570; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: City of Montgomery; DOCKET NUMBER: 2010-1872-MWD-E; IDENTIFIER: RN101920106; LOCATION: Montgomery, Montgomery County; TYPE OF FACILITY: domestic wastewater treatment system; RULE VIOLATED: 30 TAC §305.125(17) and TPDES Permit Number WQ0011521001, Sludge Provisions, by failing to submit the annual sludge report for the monitoring periods ending July 31, 2009 and July 31, 2010 by September 1st of each year; PENALTY: \$2,640; ENFORCEMENT COORDINATOR: Jeremy Escobar, (361) 825-3422; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: City of San Augustine; DOCKET NUMBER: 2010-1714-MWD-E; IDENTIFIER: RN103137949; LOCATION: San Augustine County; TYPE OF FACILITY: domestic wastewater treatment system; RULE VIOLATED: TWC, §26.121(a), 30 TAC §305.125(1), and TPDES Permit Number WQ0010268001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits for flow, ammonia nitrogen (NH<sub>3</sub>N), and total suspended solids (TSS); PENALTY: \$37,975; Supplemental Environmental Project (SEP) offset amount of \$30,380 applied to Texas Association of Resource Conservation and Development Areas, Inc. (RC&D) - Water or Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(9) COMPANY: Comal County; DOCKET NUMBER: 2010-1353-EAQ-E; IDENTIFIER: RN105504120; LOCATION: Comal County; TYPE OF FACILITY: sports park; RULE VIOLATED: 30 TAC §213.23(a)(1) and (i), by failing to obtain approval of a modification to an approved Contributing Zone Plan prior to commencement of regulated activities; PENALTY: \$1,875; SEP offset amount of \$1,500 applied to RC&D - Abandoned Tire Clean-Up; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(10) COMPANY: CW SCOA West, LP and Harris County Municipal Utility District Number 500; DOCKET NUMBER: 2011-0057-MWD-E; IDENTIFIER: RN104482237; LOCATION: Harris County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), TPDES Permit Number WQ0014740001, Interim I Effluent Limitations and Monitoring Requirements Numbers 1 and 3, by failing to comply with the permitted effluent limitations for *E. Coli*, pH, and TSS; and 30 TAC §305.125(1) and (17), and §319.7(d) and TPDES Permit Number WQ0014740001, Monitoring and Reporting Requirements Number 1, by failing to timely submit the discharge monitoring report for the monitoring period ending November 30, 2009 by the 20th day of the following month; PENALTY: \$2,815; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: FORMOSA UTILITY VENTURE, Limited and Formosa Plastics Corporation, Texas; DOCKET NUMBER: 2010-1903-IWD-E; IDENTIFIER: RN100218973; LOCATION: Point Comfort, Calhoun County; TYPE OF FACILITY: plastics organic and inorganic chemicals manufacturing facility with associated wastewater treatment plant; RULE VIOLATED: TPDES Permit Number WQ0002436000, Effluent Limitations and Monitoring Requirements Numbers 1 and 30, TAC §305.125(1), and TWC, §26.121(a)(1), by failing to comply with the daily maximum discharge permitted effluent limit for phenol; and TPDES Permit Number WQ0002436000, Permit Conditions Number 2.d., and TWC, §26.121(a), by failing to prevent the unauthorized discharge of 284,764 gallons of wastewater through outfalls 006 and 007; PENALTY: \$68,600; SEP offset amount of \$27,440 applied to National Audubon Society - Sundown Island Sanctuary Anti-erosion, Re-vegetation and Pest Control Project; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(12) COMPANY: Holly Energy Partners, Operating, L.P. dba Holly Energy Orla Terminal; DOCKET NUMBER: 2010-1906-IHW-E; IDENTIFIER: RN102411162; LOCATION: Culberson County; TYPE OF FACILITY: petroleum bulk terminal; RULE VIOLATED: 30 TAC §335.9(a)(2), by failing to submit a complete and accurate annual waste summary; and 30 TAC §335.2(b) and 40 Code of Federal

Regulations (CFR) §262.20(b), by failing to prevent the shipment of hazardous waste to an unauthorized facility; PENALTY: \$30,350; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(13) COMPANY: Karen Reeves; DOCKET NUMBER: 2010-1931-PWS-E; IDENTIFIER: RN101272433; LOCATION: Cooke County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.46(f)(2), (3)(A)(i)(II), (ii)(III), and (B)(iii), by failing to provide facility records to commission personnel at the time of the investigation; 30 TAC §290.46(m)(1)(A), by failing to conduct an annual inspection of the ground storage tank; 30 TAC §290.42(l), by failing to compile and maintain a plant operations manual for operator review and reference; 30 TAC §290.41(c)(3)(N), by failing to provide flow measuring devices for each well to measure production yields and provide for the accumulation of water production data; 30 TAC §290.46(m)(4), by failing to maintain all treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition; 30 TAC §290.41(c)(3)(P), by failing to provide an all-weather access road to the well site; 30 TAC §290.46(m)(1)(B), by failing to conduct an annual inspection of the pressure tank; 30 TAC §290.46(q)(1), by failing to issue a boil water notification within 24 hours using the prescribed notification format as specified in 30 TAC §290.47(e); 30 TAC §290.110(b)(4) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to maintain the residual disinfectant concentration in the water of at least 0.2 mg/L free chlorine throughout the distribution system at all times; 30 TAC §290.44(d)(5), by failing to provide the water system with sufficient valves and blowoffs so that necessary repairs can be made without undue interruption of service and for flushing the system when required; 30 TAC §290.46(f)(2), (3)(A)(i)(II), (ii)(III), and (B)(ii), by failing to keep copies of facility records on file or stored electronically and made accessible for review during inspections; 30 TAC §290.46(v), by failing to ensure that all electrical wiring at the facility is securely installed in compliance with a local or national electrical code; and 30 TAC §290.46(m)(1)(B), by failing to conduct annual inspections of the two pressure tanks; PENALTY: \$5,063; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: National Petro Incorporated dba New K and T Quick Stop; DOCKET NUMBER: 2010-2053-PST-E; IDENTIFIER: RN102439932; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to provide a method of release detection for the UST system; PENALTY: \$1,625; ENFORCEMENT COORDINATOR: Raymond Marlow, (409) 899-8785; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: P.U. Corporation dba Gainesville Fuel Stop; DOCKET NUMBER: 2010-2003-PST-E; IDENTIFIER: RN102027372; LOCATION: Gainesville, Cooke County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor USTs for releases at a frequency of at least once every month and by failing to provide proper release detection for the piping associated with the UST system; PENALTY: \$5,942; ENFORCEMENT COORDINATOR: Tate Barrett, (713) 422-8968; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Pilot Travel Centers, LLC; DOCKET NUMBER: 2010-2038-IWD-E; IDENTIFIER: RN105495063; LOCATION: Hunt

County; TYPE OF FACILITY: retail fueling station and restaurant with associated wastewater treatment; RULE VIOLATED: TWC, §26.121(a), 30 TAC §305.125(1), and TPDES Permit Number WQ0004849000, Effluent Limitations and Monitoring Requirements Numbers 1 and 5, by failing to comply with the permitted effluent limits for TSS, BOD, chlorine, and oil and grease; PENALTY: \$8,750; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Prairie Grove Water Supply Corporation; DOCKET NUMBER: 2010-2059-PWS-E; IDENTIFIER: RN101459758; LOCATION: Diboll, Angelina County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.46(d)(2)(A) and §290.110(b)(4), by failing to operate the disinfection equipment to maintain a free chlorine residual of 0.2 mg/L free chlorine throughout the distribution system at all times; 30 TAC §290.46(f)(3)(A)(vi), by failing to maintain maintenance records for facility equipment and appurtenances; and 30 TAC §290.46(e)(4)(A) and THSC, §341.033(a), by failing to operate the facility under the direct supervision of a water works operator who holds a Class D or higher license; PENALTY: \$532; ENFORCEMENT COORDINATOR: Kelly Wisian, (512) 239-2570; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(18) COMPANY: PTCAA Texas, L.P.; DOCKET NUMBER: 2011-0383-PST-E; IDENTIFIER: RN100941798; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.221, by failing to have Stage I vapor recovery equipment; PENALTY: \$1,750; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(19) COMPANY: Pure-Flow, Incorporated dba Andrews-Butane Route Disposal; DOCKET NUMBER: 2010-1880-AIR-E; IDENTIFIER: RN101989499; LOCATION: Andrews County; TYPE OF FACILITY: salt water disposal; RULE VIOLATED: 30 TAC §101.4 and THSC, §382.085(b), by failing to prevent nuisance conditions; and 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain a permit or satisfy the conditions of a Permit-by-Rule; PENALTY: \$8,000; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 403-4006; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (432) 570-1359.

(20) COMPANY: R2R Recycling, LLC; DOCKET NUMBER: 2011-0034-MSW-E; IDENTIFIER: RN106016512; LOCATION: Arlington, Tarrant County; TYPE OF FACILITY: waste recycling; RULE VIOLATED: 30 TAC §328.5(b), by failing to provide a completed Notice of Intent to operate a recycling facility to the TCEQ prior to the commencement of new operations; 30 TAC §328.5(c)(1) and (h), by failing to provide a closure cost estimate for combustible materials stored outdoors at least 90 days prior to the receipt of materials and failing to make available a copy of the Fire Prevention and Suppression Plan to the local fire prevention authority; and 30 TAC §328.4(d), by failing to prevent acceptance of 12 cubic yards of recyclable waste containing greater than 10% incidental nonrecyclable waste; PENALTY: \$2,250; ENFORCEMENT COORDINATOR: Tate Barrett, (713) 422-8968; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: Real and Retail Unlimited Incorporated dba Argyle Johnny Joe's; DOCKET NUMBER: 2010-1914-PST-E; IDENTIFIER: RN103052502; LOCATION: Argyle, Denton County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.42(i), by failing to inspect all sumps, manways, overspill containers, or catchment basins associated with the

UST system at least once every 60 days; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; PENALTY: \$4,189; ENFORCEMENT COORDINATOR: Cara Windle, (512) 239-2581; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: Saginaw Enterprises, LLC dba Saginaw Gas House; DOCKET NUMBER: 2011-0112-PST-E; IDENTIFIER: RN102986452; LOCATION: Saginaw, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the UST system; PENALTY: \$1,875; ENFORCEMENT COORDINATOR: Kelly Wisian, (512) 239-2570; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: Scott W. Wiler; DOCKET NUMBER: 2011-0257-OSI-E; IDENTIFIER: RN103555769; LOCATION: Union Grove, Upshur County; TYPE OF FACILITY: onsite sewage disposal; RULE VIOLATED: THSC, §366.051(c) and 30 TAC §285.61(4), by failing to obtain documentation of authorization to construct prior to beginning construction of an onsite sewage facility; PENALTY: \$188; ENFORCEMENT COORDINATOR: Thomas Jecha, (512) 239-2576; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(24) COMPANY: Supertrack Arlington, Incorporated dba Supertrack; DOCKET NUMBER: 2010-2010-PST-E; IDENTIFIER: RN102849379; LOCATION: Arlington, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; 30 TAC §334.50(b)(2)(A)(i) and TWC, §26.3475(a), by failing to equip each separate pressurized line with an automatic line leak detector; 30 TAC §334.42(i), by failing to inspect all sumps including the dispenser sumps, manways, overspill containers, or catchment basins associated with the UST system at least once every 60 days; and 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for inspection upon request by agency personnel; PENALTY: \$6,904; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(25) COMPANY: Tall Timbers Utility Company, Incorporated; DOCKET NUMBER: 2010-1942-MWD-E; IDENTIFIER: RN101519981; LOCATION: Tyler, Smith County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a), and TPDES Permit Number WQ0013000001, Final Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations for NH<sub>3</sub>N and TSS; PENALTY: \$7,400; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0735; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(26) COMPANY: Tenet Hospitals Limited dba Doctors Hospital; DOCKET NUMBER: 2010-1908-PST-E; IDENTIFIER: RN100806629; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: hospital; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued UST



delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; 30 TAC §334.50(b) and TWC, §26.3475(a), by failing to provide proper release detection for the pressurized piping associated with the UST; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor UST for releases at a frequency of at least once per month; and 30 TAC §334.42(i), by failing to inspect all sumps, manways, overspill containers, or catchment basins associated with a UST system at least once every 60 days; PENALTY: \$12,342; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(27) COMPANY: Tristar Aggregates 1, LLC; DOCKET NUMBER: 2010-1757-AIR-E; IDENTIFIER: RN106029689; LOCATION: Wilson County; TYPE OF FACILITY: rock crushing plant; RULE VIOLATED: 30 TAC §116.115(b) and §116.615(2), Air Quality Standard Permit for Temporary Rock and Concrete Crushers, General Condition (3)(E) and THSC, §382.085(b), by failing to limit rock crushing activities to 180 non-consecutive calendar days; 30 TAC §116.615(8), Air Quality Standard Permit for Temporary Rock and Concrete Crushers, General Condition (1)(M) and THSC, §382.085(b), by failing to maintain records of hours and days of operation, run times, model number, and serial number for the CEC Impact Crusher; and 30 TAC §116.115(b) and §116.615(2), Air Quality Standard Permit for Temporary Rock and Concrete Crushers, General Condition (3)(E) and THSC, §382.085(b), by failing to remove the CEC Impact Crusher from the site within 24 hours after reaching the authorized operating limit of 180 days; PENALTY: \$6,020; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 403-4006; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(28) COMPANY: Waste Control Specialists, LLC; DOCKET NUMBER: 2010-1632-IWD-E; IDENTIFIER: RN101702439; LOCATION: Andrews County; TYPE OF FACILITY: byproduct material disposal facility; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0004857000, Other Requirements Number 16, by failing to comply with permit effluent limits for aluminum, cadmium, chlorine, copper, and iron; PENALTY: \$3,500; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (432) 570-1359.

(29) COMPANY: West Harris County Municipal Utility District Number 10; DOCKET NUMBER: 2011-0060-MWD-E; IDENTIFIER: RN101609790; LOCATION: Harris County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), TPDES Permit Number WQ0014072001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with the permitted effluent limitations for NH<sub>3</sub>-N; PENALTY: \$2,300; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(30) COMPANY: Y and V Enterprises, LLC dba I-30 Mini Mart; DOCKET NUMBER: 2011-0101-PST-E; IDENTIFIER: RN100774298; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make

available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: \$1,295; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201101226

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 29, 2011



### Notice of Comment Period and Hearing on Draft Oil and Gas General Operating Permit

The Texas Commission on Environmental Quality (TCEQ) is providing an opportunity for public comment and a notice and comment hearing (hearing) on the draft revisions and renewals to the Oil and Gas General Operating Permit (GOP) Numbers 511 - 514. The draft GOPs contain revisions based on recent federal and state rule changes; such as, the addition of 40 Code of Federal Regulations Part 60, Subparts IIII, KKKK, and JJJJ; updating 30 Texas Administrative Code Chapter 115 degassing and cleaning terms; and the reference to the new Air Quality Standard Permit for Oil and Gas Handling and Production Facilities.

The draft GOPs are subject to a 30-day comment period. During the comment period, any person may submit written comments on the draft GOP. A hearing will be held in Austin on April 28, 2011 at 10:00 a.m. in Room 201S of TCEQ, Building E, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, a TCEQ staff member will be available to discuss the draft GOP 30 minutes prior to the hearing and will also be available to answer questions after the hearing.

Copies of the draft GOPs may be obtained from the TCEQ Web site at [http://www.tceq.texas.gov/permitting/air/nav/air\\_genoppermits.html](http://www.tceq.texas.gov/permitting/air/nav/air_genoppermits.html) or by contacting the TCEQ Office of Permitting and Registration, Air Permits Division at (512) 239-1250. Written comments may be mailed to Johnny Bowers, Texas Commission on Environmental Quality, Office of Permitting and Registration, Air Permits Division, MC 163, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-1070. **All comments should reference the draft Oil and Gas GOPs. Comments must be received by 5:00 p.m. on May 9, 2011.** For further information, contact Mr. Bowers at (512) 239-6770.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact the TCEQ at (512) 239-4000. Requests should be made as far in advance as possible.

TRD-201101219

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: March 28, 2011



### Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Limited Scope Permit Amendment Permit No. 948A

**APPLICATION.** The City of Waco, 501 Schroeder Drive, Waco, McLennan County, Texas 76710, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Municipal Solid Waste Type I Limited Scope Permit Amendment to allow installation of an alternate liner system which includes a Geosynthetic Clay Liner. The facility is located at 11400 Old McGregor Road, Waco, McLennan County, Texas 76712. The TCEQ received the application on February 18, 2011. The permit application is available for viewing and copying at the City of Waco, City Hall - Secretary's Office, 1st Floor, 300 Austin Avenue, Waco, McLennan County, Texas 76701-2209.

**ADDITIONAL NOTICE.** TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

**PUBLIC COMMENT/PUBLIC MEETING.** You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

**OPPORTUNITY FOR A CONTESTED CASE HEARING.** After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

**TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST:** your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and, the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's de-

cision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

**MAILING LIST.** If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

**AGENCY CONTACTS AND INFORMATION.** All written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at [www.tceq.state.tx.us/about/comments.html](http://www.tceq.state.tx.us/about/comments.html). If you need more information about this permit application or the permitting process, please call TCEQ Office of Public Assistance, toll free, at 1-800- 687-4040. Si desea información en Español, puede llamar al 1-800-687-4040. General information about TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

Further information may also be obtained from the City of Waco at the address stated above or by calling Mr. Kenneth Anthony, Director of Solid Waste Services at (254) 750-1601.

TRD-201101236

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 30, 2011



## Notice of Water Quality Applications

The following notice was issued on March 18, 2011 through March 25, 2011.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, **WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.**

## INFORMATION SECTION

**COTTONWOOD ENERGY COMPANY LP** which operates the Cottonwood Energy Project, a natural gas-fired, combined cycle electric power generating facility, has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004230000, which authorizes the discharge of treated low volume wastewater, cooling tower blowdown, and previously monitored effluent (treated domestic wastewater) at a daily average flow not to exceed 2,250,000 gallons per day via Outfall 001. The facility is located southwest of the City of Ruliff, west of Indian Lake Road, approximately 0.75 miles south of the intersection of Indian Lake Road and Hartburg Road, Newton County, Texas 77614.

**US FISH AND WILDLIFE SERVICE** which operates Aransas National Wildlife Refuge, has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, proposed Permit No. WQ004917000, to authorize the disposal of reverse osmosis reject water via subsurface disposal at a daily average flow not to exceed 937 gallons per day. This permit will not authorize a discharge of pollutants

into water in the State. The facility and disposal site are located at the headquarters area of the Aransas National Wildlife Refuge (ANWR), 7 miles southwest of Austwell, Texas at the end of FM 2040, Aransas County, Texas.

THE SABINE MINING COMPANY which proposes to operate South Hallsville No. 1 Mine-Rusk Area, a surface lignite coal mine, has applied for a new permit, proposed TPDES Permit No. WQ0004933000, to authorize the discharge of mine pit water, mine depressurization water and surface water runoff from ponds in the active mining area on an intermittent and flow variable basis via Outfall 001; and surface water runoff from ponds in the post mining area on an intermittent and flow variable basis via Outfall 101. The facility is located approximately three miles north of Tatum, Texas; west of State Highway 43; north of Farm-to-Market 7096 in Rusk and Panola Counties, Texas 75652 and 75633.

CONROE BAY WATER-SEWER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0012582001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 48,000 gallons per day. The facility is located at 13075 Point Drive, 450 feet north of Lake Conroe and approximately 5 miles northwest of the City of Willis in Montgomery County, Texas 77378.

RIO GRANDE MINING COMPANY which operates the Shafter Mine, has applied for a major amendment to TCEQ Permit No. WQ0004297000 for a major amendment without renewal to TCEQ Permit No. WQ0004297000 to amend its existing Texas Land Application Permit (TLAP) permit, which authorized the disposal of wastewater via surface and sub-surface irrigation, to a TPDES discharge permit to authorize the direct discharge of wastewater to waters in the state. The current permit authorizes the disposal of mine dewatering water via surface and subsurface irrigation at a daily average flow not to exceed 360,000 gallons per day. The facility is located west of U.S. Highway 67, approximately one mile west of the Shafter townsite, Presidio County, Texas 79843.

THE CITY OF MCCAMEY has applied for a major amendment to TCEQ Permit No. WQ0010218001, to include an additional 15.2 acre irrigation area adjacent to the wastewater treatment facility. The existing permit authorizes the disposal of treated domestic wastewater effluent at a daily average flow not to exceed 0.225 MGD via evaporation and surface irrigation of 92 acres at the Country Club Golf Course. The applicant is also requesting to reduce the permitted flow to daily average flow not to exceed 0.110 MGD. The wastewater treatment facility and proposed irrigation site are located on the east side of Farm-to-Market Road 305 approximately 2 miles south-southeast of the intersection of Farm-to-Market Road 305 and U.S. Highway 67. The irrigation site will be located directly north of the wastewater treatment plant in Upton County, Texas 79752. The existing irrigation site is located northwest of the wastewater treatment facility, on the west side of Farm-to-Market Road 305, approximately 0.5 mile south of the intersection of Farm-to-Market Road 305 and U.S. Highway 67 in Upton County, Texas. The wastewater treatment facility and irrigation sites are located in the drainage basin of the Upper Pecos River in Segment No. 2311 of the Rio Grande Basin. This permit will not authorize a discharge of pollutants into waters in the state.

CITY OF PAMPA has applied for a renewal of TPDES Permit No. WQ0010358002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day. The facility is located on the north bank of Red Deer Creek, at a point 3,400 feet northeast of State Highway Loop 171, approximately 3.5 miles northeast of the intersection of U.S. Highway 60 and State Highway 273 in Gray County, Texas 79065.

CITY OF THROCKMORTON has applied for a renewal of TPDES Permit No. WQ0010469002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day. The facility is located approximately 1,500 feet east of U.S. Highway 183 and 2,500 feet south of U.S. Highway 380 in Throckmorton County, Texas 79483.

GRDM WEST MAIN PARTNERS LP has applied for a new permit, proposed TPDES Permit No. WQ0014990001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility will be located at 12955 South Freeway, Houston, approximately 950 feet north and 540 feet east of the intersection of Hycohen Road and East Anderson Road in Harris County, Texas 77047.

LAPOYNER INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0013538001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day. The facility is located on the LaPoyner I.S.D. campus, approximately 2 miles southeast of the intersection of U.S. Highway 175 and Farm-to-Market Road 2588 in Henderson County, Texas 75770.

SOUTHERN UTILITIES COMPANY has applied for a renewal of TPDES Permit No. WQ0014080001, which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 6,000 gallons per day. The facility is located at County Road 178, approximately one-tenth of a mile south of the intersection of County Road 178 and Farm-to-Market Road 2868 in Smith County, Texas 75762.

CITY OF SAINT JO has applied for a renewal of TPDES Permit No. WQ0014496001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. TCEQ received this application on November 30, 2010. The facility is located approximately one mile southeast of the City of Saint Jo and approximately 1,000 feet south of U.S. Highway 82, on the north bank of the Elm Fork Trinity River in Montague County, Texas 76265.

CITY OF TIMPSON has applied for a renewal of TPDES Permit No. WQ0010614002 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility is located approximately 0.5 mile east of State Highway 87 on extension of Holly Street, approximately 1.0 mile southeast of the intersection of U.S. Highway 59 and State Highway 87 in Shelby County, Texas 75975.

CITY OF HUNTSVILLE has applied for a renewal of TPDES Permit No. WQ0010781002 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,600,000 gallons per day. The applicant has also applied to the TCEQ for approval of a substantial modification to its pretreatment program under the TPDES program. The facility is located approximately 1.4 miles southwest of the Elkins Lake Dam and 3.5 miles south of the intersection of Farm-to-Market Road 1374 and Interstate Highway 45, south of the City of Huntsville in Walker County, Texas 77340.

WILLIAMSBURG REGIONAL SEWAGE AUTHORITY has applied for a renewal of TPDES Permit No. WQ0011598001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day. The facility is located at 22832 Franz Road, approximately 5,000 feet west and 5,600 feet north of the intersection of Interstate Highway 10 and Mason Road in Harris County, Texas 77449.

RENN ROAD MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0012078001, which authorizes the discharge of treated domestic wastewater at an annual average flow

not to exceed 2,500,000 gallons per day. The facility is located at 9535 Sugarland-Howell Road, immediately northeast of the crossing of Sugarland-Howell Road over Keegans Bayou in Fort Bend County, Texas 77498.

FRUITVALE INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0012369001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 5,400 gallons per day. The facility is located approximately 1,200 feet northeast of the intersection of U.S. Highway 80 and Farm-to-Market Road 1910 and approximately 2.1 miles east of the intersection of U.S. Highway 80 and State Highway 19 in Van Zandt County, Texas 75127.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, **WITHIN 30 DAYS OF THE ISSUED DATE OF THE NOTICE.**

REEDHYCALOG LP which operates the ReedHycalog Plant, has applied for a minor amendment to TPDES Permit No. WQ0000635000 to authorize the removal of Outfall 004 from the permit. The existing permit authorizes the discharge of treated groundwater at a daily average flow not to exceed 35,000 gallons per day via Outfall 003 and treated groundwater at a daily average flow not to exceed 100,000 gallons per day via Outfall 004. The facility is located at 6501 Navigation Boulevard, in the Northwest quadrant as defined by the intersection on Navigation Boulevard and Houston Belt and Terminal Rail Road, in the City of Houston, Harris County, Texas 77011.

THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY has initiated a minor amendment of the TPDES Permit No. WQ0011252001 issued to Red River Authority of Texas to correct the permit expiration date. The existing permit was issued on January 31, 2011 with an expiration date of December 1, 2010, an invalid expiration date. The amended permit has corrected the expiration date to December 1, 2015. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 12,500 gallons per day. The facility is located approximately 0.7 mile east of the intersection of State Highway 86 and U.S. Highway 287, east of the City of Estelline, and south of the Fort Worth and Denver Railroad in Hall County, Texas 79233.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, toll free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-201101235

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 30, 2011

## **Texas Department of Housing and Community Affairs**

Program Year (PY) 2011 Weatherization Assistance Program Request for Applications (RFA)

### **I. Request for Applications (RFA).**

The Community Affairs Division of the Texas Department of Housing and Community Affairs (the "Department") is soliciting eligible organizations to administer the Department of Energy (DOE) Weatherization Assistance Program (WAP) and Low-Income Home Energy Assistance Program (LIHEAP) WAP operations providing services and assistance to the eligible low-income population in Webb County.

erization Assistance Program (WAP) and Low-Income Home Energy Assistance Program (LIHEAP) WAP operations providing services and assistance to the eligible low-income population in Webb County.

### **II. The initial grant period for the WAP is from contract initiation through March 31, 2013. Contracts will be renewed annually.**

### **III. Applicant Eligibility.**

Organizations eligible to apply for designation as the eligible entity(ies) to serve Webb County must be a private non-profit organization or a political subdivision of the State. **Organizations that currently administer WAP funds shall receive priority consideration over all other applicants.**

### **IV. Application Availability.**

The RFA is posted on the Department's website: <http://www.tdhca.state.tx.us/ea/index.htm> and organizations on the Department's LISTSERV will receive an email notification that the RFA is available.

### **V. Deadline for Receipt.**

The original and one (1) complete copy of your organization's proposal submission shall be provided to the Department by **5:00 p.m. on April 29, 2011**, regardless of method of delivery.

### **Mailing Address:**

Mr. Michael DeYoung, Director

Community Affairs Division

Texas Department of Housing and Community Affairs

P.O. Box 13941

Austin, Texas 78711-3941

(All U.S. Postal Service including Express)

### **Courier Delivery:**

221 East 11th Street, 1st Floor

Austin, Texas 78701

(FedEx, UPS, Overnight, etc.)

### **Hand Delivery:**

If you are hand delivering the application, contact Dee Farnell at (512) 936-7808 when you arrive at the lobby of our building.

**Questions.** Questions pertaining to the PY 2011 Weatherization Assistance Program Request for Applications may be directed to Sharon Gamble at (512) 475-0471 ([sharon.gamble@tdhca.state.tx.us](mailto:sharon.gamble@tdhca.state.tx.us)).

TRD-201101230

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Filed: March 30, 2011

## **Texas Department of Insurance**

### **Company Licensing**

Application to do business in the State of Texas by SENDERO HEALTH PLANS, INC., a domestic health maintenance organization. The home office is in Austin, Texas.

Application for SENDERO HEALTH PLANS, INC., a domestic health maintenance organization, DBA (doing business as) SENDERO HEALTH. The home office is in Austin, Texas.

Application for SENDERO HEALTH PLANS, INC., a domestic health maintenance organization, DBA (doing business as) SENDERO HEALTH PLANS. The home office is in Austin, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-201101234  
Gene C. Jarmon  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Filed: March 30, 2011

◆ ◆ ◆  
**Texas Lottery Commission**

Instant Game Number 1320 "3 Times the Money"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1320 is "3 TIMES THE MONEY". The play style is "key number match with tripler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1320 shall be \$3.00 per ticket.

1.2 Definitions in Instant Game No. 1320.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3X, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, \$3.00, \$6.00, \$8.00, \$9.00, \$10.00, \$15.00, \$18.00, \$24.00, \$30.00, \$60.00, \$90.00, \$100, \$300, \$1,000, \$3,000 or \$30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1320 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3X	TRIPLE
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
\$3.00	THREE\$
\$6.00	SIX\$
\$8.00	EIGHT\$
\$9.00	NINE\$
\$10.00	TEN\$
\$15.00	FIFTN

<b>\$18.00</b>	<b>EGHTN</b>
<b>\$24.00</b>	<b>TWY FOR</b>
<b>\$30.00</b>	<b>THIRTY</b>
<b>\$60.00</b>	<b>SIXTY</b>
<b>\$90.00</b>	<b>NINTY</b>
<b>\$100</b>	<b>ONE HUND</b>
<b>\$300</b>	<b>THR HUND</b>
<b>\$1,000</b>	<b>ONE THOU</b>
<b>\$3,000</b>	<b>THR THOU</b>
<b>\$30,000</b>	<b>30 THOU</b>

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$3.00, \$6.00, \$9.00, \$15.00, \$18.00 or \$24.00.

G. Mid-Tier Prize - A prize of \$30.00, \$60.00, \$90.00 or \$300.

H. High-Tier Prize - A prize of \$3,000 or \$30,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1320), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1320-0000001-001.

K. Pack - A pack of "3 TIMES THE MONEY" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of ticket 001 and the back of ticket 125. Configuration B will show the back of ticket 001 and the front of ticket 125.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "3 TIMES THE MONEY" Instant Game No. 1320 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "3 TIMES THE MONEY" Instant Game is determined once the latex on the ticket is scratched off to expose 32 (thirty-two) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either WINNING NUMBER play symbol, the player wins the PRIZE for that number. If a player reveals a "3X" play symbol, the player wins TRIPLE the PRIZE for that symbol. No por-

tion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 32 (thirty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 32 (thirty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 32 (thirty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 32 (thirty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The "3X" (trippler) play symbol will only appear on intended winning tickets and only as dictated by the prize structure.

C. No four or more matching non-winning prize symbols on a ticket.

D. No duplicate WINNING NUMBERS play symbols on a ticket.

E. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e., 6 and \$6).

H. The top prize will appear on every ticket unless otherwise restricted.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "3 TIMES THE MONEY" Instant Game prize of \$3,000, \$6,000, \$9,000, \$15,000, \$18,000, \$24,000, \$30,000, \$60,000, \$90,000 or \$300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30,000, \$60,000, \$90,000 or \$300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and

the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "3 TIMES THE MONEY" Instant Game prize of \$3,000 or \$30,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "3 TIMES THE MONEY" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

- B. if there is any question regarding the identity of the claimant;

- C. if there is any question regarding the validity of the ticket presented for payment; or

- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "3 TIMES THE MONEY" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.



2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "3 TIMES THE MONEY" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 1320. The approximate number and value of prizes in the game are as follows:

**Figure 2: GAME NO. 1320 - 4.0**

<b>Prize Amount</b>	<b>Approximate Number of Winners*</b>	<b>Approximate Odds are 1 in**</b>
<b>\$3</b>	<b>384,000</b>	<b>15.63</b>
<b>\$6</b>	<b>528,000</b>	<b>11.36</b>
<b>\$9</b>	<b>108,000</b>	<b>55.56</b>
<b>\$15</b>	<b>36,000</b>	<b>166.67</b>
<b>\$18</b>	<b>60,000</b>	<b>100.00</b>
<b>\$24</b>	<b>48,000</b>	<b>125.00</b>
<b>\$30</b>	<b>48,000</b>	<b>125.00</b>
<b>\$60</b>	<b>18,200</b>	<b>329.67</b>
<b>\$90</b>	<b>6,500</b>	<b>923.08</b>
<b>\$300</b>	<b>1,400</b>	<b>4,285.71</b>
<b>\$3,000</b>	<b>23</b>	<b>260.869.57</b>
<b>\$30,000</b>	<b>7</b>	<b>857,142.86</b>

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.85. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1320 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1320, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant

to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201101178  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: March 24, 2011



Instant Game Number 1321 "Veterans Cash"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1321 is "VETERANS CASH". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1321 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 1321.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play

Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, DOLLAR SIGN SYMBOL, \$2.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, MERCHANDISE SYMBOL, \$1,000 and \$20,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1321 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXT
17	SVT
18	EGN
19	NTN
20	TWY
21	TNE
22	TTW
23	TTH
24	TFR
25	TFV
26	TSX
27	TSV
28	TEI
29	TNI
30	THY
DOLLAR SIGN SYMBOL	WINALL
\$2.00	TWO\$
\$5.00	FIVE
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUN
MERCH	PACK
\$1,000	ONE THOU
\$20,000	20 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits

of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$2.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$30.00, \$50.00, \$100 or PRIZE PACK.

H. High-Tier Prize - A prize of \$1,000 or \$20,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1321), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1321-0000001-001.

K. Pack - A pack of "VETERANS CASH" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One ticket will be folded over to expose a front and back of one ticket on each pack. Please note the books will be in an A, B, C and D configuration.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "VETERANS CASH" Instant Game No. 1321 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "VETERANS CASH" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either WINNING NUMBER play symbol, the player wins the PRIZE for that number. If a player reveals a "DOLLAR SIGN" play symbol, the player wins ALL 10 PRIZES! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. A ticket will win as indicated by the prize structure.

C. Players can win up to ten (10) times on a ticket.

D. No duplicate non-winning YOUR NUMBERS on a ticket.

E. Non-winning prize symbols will not match a winning prize symbol on a ticket.

F. Non-winning tickets will not contain more than two identical prize amounts.

G. No duplicate WINNING NUMBERS will appear on a ticket.

H. The "\$" symbol will never appear as a WINNING NUMBER.

I. The "\$" symbol will automatically win all 10 prizes on a ticket and will win as per the prize structure.

J. The "\$" symbol will never appear more than once on a ticket.

K. The "\$" symbol will never appear on a non-winning ticket.

L. On "\$" winning tickets, no YOUR NUMBERS will match any of the WINNING NUMBERS.

M. The prize symbol "MERCH" will only appear on tickets winning the corresponding merchandise prize packs and will win as per the prize structure.

N. YOUR NUMBERS will never equal the corresponding PRIZE symbol (i.e., 5 and \$5).

### 2.3 Procedure for Claiming Prizes.

A. To claim a "VETERANS CASH" Instant Game prize of \$2.00, \$5.00, \$10.00, \$20.00, \$30.00, \$50.00, \$100 or PRIZE PACK, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$50.00, \$100 or PRIZE PACK ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "VETERANS CASH" Instant Game prize of \$1,000 or \$20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "VETERANS CASH" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "VETERANS CASH" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "VETERANS CASH" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

### 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 tickets in the Instant Game No. 1321. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1321 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	1,370,880	7.35
\$5	645,120	15.63
\$10	201,600	50.00
\$20	80,640	125.00
\$30	30,240	333.33
\$50	13,188	764.33
\$100	3,990	2,526.32
PRIZE PACK	3,345	3,013.45
\$1,000	18	560,000.00
\$20,000	11	916,363.64

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.29. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1321 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1321, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201101179

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: March 24, 2011



Instant Game Number 1325 "5 Times Lucky"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1325 is "5 TIMES LUCKY". The play style is "key number match with auto win and win X 5".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1325 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 1325.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, CLOVER SYMBOL, HORSESHOE SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$200, \$1,000, \$2,000 or \$50,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1325 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
CLOVER SYMBOL	CLOVER
HORSESHOE SYMBOL	WINX5
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY

<b>\$50.00</b>	<b>FIFTY</b>
<b>\$100</b>	<b>ONE HUND</b>
<b>\$200</b>	<b>TWO HUND</b>
<b>\$1,000</b>	<b>ONE THOU</b>
<b>\$2,000</b>	<b>TWO THOU</b>
<b>\$50,000</b>	<b>50 THOU</b>

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$25.00, \$50.00, \$100, \$150 or \$200.

H. High-Tier Prize - A prize of \$2,000 or \$50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1325), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1325-0000001-001.

K. Pack - A pack of "5 TIMES LUCKY" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "5 TIMES LUCKY" Instant Game No. 1325 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "5 TIMES LUCKY" Instant Game is determined once the latex on the ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins the PRIZE for that number. If a player reveals a "CLOVER" play symbol, the player wins the PRIZE for that symbol instantly. If a player reveals a "HORSESHOE" play symbol, the player wins 5 TIMES the PRIZE for that symbol! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

- Exactly 45 (forty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;
- Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
- Each of the Play Symbols must be present in its entirety and be fully legible;
- Each of the Play Symbols must be printed in black ink except for dual image games;
- The ticket shall be intact;
- The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
- The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
- The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
- The ticket must not be counterfeit in whole or in part;
- The ticket must have been issued by the Texas Lottery in an authorized manner;
- The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
- The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
- The ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
- The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
- The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
- Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
- Each of the 45 (forty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;



18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The "HORSESHOE" (win x 5) play symbol will only appear on intended winning tickets as dictated by the prize structure.

C. The "CLOVER" (auto win) play symbol will never appear more than once on a ticket.

D. No four or more duplicate non-winning prize symbols on a ticket.

E. No duplicate WINNING NUMBERS play symbols on a ticket.

F. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

G. Non-winning prize symbols will never be the same as the winning prize symbol(s).

H. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e., 5 and \$5).

I. The top prize symbol will appear on every ticket unless otherwise restricted.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "5 TIMES LUCKY" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$100, \$150 or \$200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$25.00, \$50.00, \$100, \$150 or \$200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "5 TIMES LUCKY" Instant Game prize of \$2,000 or \$50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by

the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "5 TIMES LUCKY" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "5 TIMES LUCKY" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "5 TIMES LUCKY" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or

within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

### 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature

appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 tickets in the Instant Game No. 1325. The approximate number and value of prizes in the game are as follows:

**Figure 2: GAME NO. 1325 - 4.0**

<b>Prize Amount</b>	<b>Approximate Number of Winners*</b>	<b>Approximate Odds are 1 in**</b>
<b>\$5</b>	643,200	12.50
<b>\$10</b>	911,200	8.82
<b>\$15</b>	107,200	75.00
<b>\$20</b>	134,000	60.00
<b>\$25</b>	107,200	75.00
<b>\$50</b>	107,200	75.00
<b>\$100</b>	4,623	1,739.13
<b>\$150</b>	3,015	2,666.67
<b>\$200</b>	804	10,000.00
<b>\$2,000</b>	603	13,333.33
<b>\$50,000</b>	8	1,005,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.98. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1325 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1325, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201101180

Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: March 24, 2011



### Instant Game Number 1329 "Scorching 7's"

#### 1.0 Name and Style of Game.

A. The name of Instant Game No. 1329 is "SCORCHING 7'S". The play style is "key number match with doubler".

#### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1329 shall be \$7.00 per ticket.

#### 1.2 Definitions in Instant Game No. 1329.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: \$7.00, \$10.00, \$15.00, \$20.00, \$40.00, \$50.00, \$100, \$500, \$2,000, \$77,777, 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24,

25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39 and 40. The possible red play symbols are: 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, HOT SYMBOL and 7 SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1329 - 1.2D

PLAY SYMBOL	CAPTION
\$7.00 (black)	SEVEN\$
\$10.00 (black)	TEN\$
\$15.00 (black)	FIFTN
\$20.00 (black)	TWENTY
\$40.00 (black)	FORTY
\$50.00 (black)	FIFTY
\$100 (black)	ONE HUND
\$500 (black)	FIV HUND
\$2,000 (black)	TWO THOU
\$77,777 (black)	77THOU777
1 (black)	ONE
2 (black)	TWO
3 (black)	THR
4 (black)	FOR
5 (black)	FIV
6 (black)	SIX
8 (black)	EGT
9 (black)	NIN
10 (black)	TEN
11 (black)	ELV
12 (black)	TLV
13 (black)	TRN
14 (black)	FTN
15 (black)	FFN
16 (black)	SXN
18 (black)	ETN
19 (black)	NTN
20 (black)	TWY
21 (black)	TWON
22 (black)	TWTO
23 (black)	TWTH
24 (black)	TWFR
25 (black)	TWV
26 (black)	TWSX
28 (black)	TWET
29 (black)	TWNI
30 (black)	TRTY
31 (black)	TRON
32 (black)	TRTO
33 (black)	TRTH
34 (black)	TRFR
35 (black)	TRV
36 (black)	TRSX
38 (black)	TRET
39 (black)	TRNI
40 (black)	FRTY

1 (red)	ONE
2 (red)	TWO
3 (red)	THR
4 (red)	FOR
5 (red)	FIV
6 (red)	SIX
8 (red)	EGT
9 (red)	NIN
10 (red)	TEN
11 (red)	ELV
12 (red)	TLV
13 (red)	TRN
14 (red)	FTN
15 (red)	FFN
16 (red)	SXN
18 (red)	ETN
19 (red)	NTN
20 (red)	TWY
21 (red)	TWON
22 (red)	TWTO
23 (red)	TWTH
24 (red)	TWFR
25 (red)	TWV
26 (red)	TWSX
28 (red)	TWET
29 (red)	TWNI
30 (red)	TRTY
31 (red)	TRON
32 (red)	TRTO
33 (red)	TRTH
34 (red)	TRFR
35 (red)	TRFV
36 (red)	TRSX
38 (red)	TRET
39 (red)	TRNI
40 (red)	FRTY
HOT SYMBOL (red)	WINALL
7 SYMBOL (red)	SVN

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$7.00, \$10.00, \$15.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$2,000 or \$77,777.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1329), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1329-0000001-001.

K. Pack - A pack of "SCORCHING 7'S" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "SCORCHING 7'S" Instant Game No. 1329 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "SCORCHING 7'S" Instant Game is determined once the latex on the ticket is scratched off to expose 44 (forty-four) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the HOT NUMBERS play symbols, the player wins prize for that number. If a player reveals a "RED 7" play symbol, the player wins DOUBLE the prize instantly! If a player reveals a "HOT" play symbol, the player wins all 20 prizes! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 44 (forty-four) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 44 (forty-four) Play Symbols under the latex overprint on the front portion

of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 44 (forty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 44 (forty-four) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Players can win up to twenty (20) times on a ticket in accordance with the approved prize structure.

B. Each ticket will contain four (4) different "HOT NUMBERS" play symbols.

C. Non-winning tickets will contain twenty (20) different "YOUR NUMBERS" play symbols.

D. On winning tickets, non-winning play symbols will all be different.

E. On winning tickets, non-winning prize symbols will never appear more than two (2) times.

F. The RED "7" and "HOT" play symbols will never appear in the "HOT NUMBERS" play spots.

G. No ticket will contain more than one (1) "HOT" play symbol.

H. The RED "7" and "HOT" play symbols will never appear on the same ticket.

I. On tickets containing a "HOT" play symbol, none of the remaining "YOUR NUMBERS" will ever match any of the "HOT NUMBERS".

J. Non-winning tickets will never contain more than two (2) identical prize symbols.

K. There will be a minimum of four (4) and a maximum of twelve (12) red play symbols in the "YOUR NUMBERS" play area on every ticket unless otherwise restricted by the prize structure.

L. There will be a minimum of one (1) and a maximum of three (3) red play symbols in the "HOT NUMBERS" play area on every ticket.

M. "HOT NUMBERS" play symbols matching "YOUR NUMBERS" play symbols will match the number and color (If the "HOT NUMBERS" play symbol is a red 7, the "YOUR NUMBERS" play symbol has to be a red 7) to be a win.

N. On non-winning tickets, there will be no matches of a "HOT NUMBERS" play symbol and a "YOUR NUMBERS" play symbol that match, but having different colors (i.e., a red five play symbol will not match a black five play symbol).

O. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" play symbol (i.e., 5 and \$5).

### 2.3 Procedure for Claiming Prizes.

A. To claim a "SCORCHING 7'S" Instant Game prize of \$7.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "SCORCHING 7'S" Instant Game prize of \$2,000 or \$77,777, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "SCORCHING 7'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "SCORCHING 7'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "SCORCHING 7'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

### 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 1329. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1329 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$7	470,400	10.71
\$10	470,400	10.71
\$15	201,600	25.00
\$20	235,200	21.43
\$50	58,800	85.71
\$100	35,700	141.18
\$500	2,394	2,105.26
\$2,000	46	109,565.22
\$77,777	6	840,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.42. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1329 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1329, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201101184  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: March 25, 2011



Instant Game Number 1332 "Money Tripler"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1332 is "MONEY TRIPLER". The play style for this game is "key number match with multiplier".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1332 shall be \$3.00 per ticket.

1.2 Definitions in Instant Game No. 1332.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, COIN SYMBOL, 3X SYMBOL, \$3.00, \$6.00, \$8.00, \$9.00, \$10.00, \$15.00, \$18.00, \$24.00, \$30.00, \$60.00, \$90.00, \$100, \$300, \$1,000, \$3,000 and \$30,000.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:



Figure 1: GAME NO. 1332 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
COIN SYMBOL	COIN
3X SYMBOL	WIN3X
\$3.00	THREE\$
\$6.00	SIX\$
\$8.00	EIGHT\$
\$9.00	NINE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$18.00	EGHTN
\$24.00	TWY FOR
\$30.00	THIRTY
\$60.00	SIXTY
\$90.00	NINTY
\$100	ONE HUND
\$300	THR HUND
\$1,000	ONE THOU
\$3,000	THR THOU
\$30,000	30 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$3.00, \$6.00, \$9.00, \$15.00, \$18.00 or \$24.00.

G. Mid-Tier Prize - A prize of \$30.00, \$60.00, \$90.00 or \$300.

H. High-Tier Prize - A prize of \$3,000 or \$30,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1332), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1332-0000001-001.

K. Pack - A pack of "MONEY TRIPLER" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of ticket 001 and the back of ticket 125. Configuration B will show the back of ticket 001 and the front of ticket 125.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MONEY TRIPLER" Instant Game No. 1332 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "MONEY TRIPLER" Instant Game is determined once the latex on the ticket is scratched off to expose 27 (twenty-seven) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins PRIZE for that number. If a player reveals a "COIN" play symbol, the player wins the PRIZE for that symbol instantly. If a player reveals a "3X" play symbol, the player wins 3 TIMES the PRIZE for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 27 (twenty-seven) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeited in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 27 (twenty-seven) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 27 (twenty-seven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 27 (twenty-seven) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Players can win up to twelve (12) times on a ticket in accordance with the approved prize structure.

B. There is no relation between the position of a ticket in a pack and its status (winner or non-winner).

C. Adjacent non-winning tickets within a pack will not have identical play or prize symbol patterns. Two (2) tickets have identical play or prize symbol patterns if they have the same play or prize symbols in the same positions.

D. No ticket will have identical "WINNING NUMBERS" play symbols.

E. Non-winning tickets will contain all different "YOUR NUMBERS" play symbols.

F. On winning tickets, non-winning play symbols will all be different.

G. Non-winning tickets will never contain more than three (3) identical prize symbols.

H. On winning tickets, non-winning prize symbols will never appear more than three (3) times.

I. The "COIN" or "3X" play symbols will never appear in the "WINNING NUMBERS" play symbol spots.

J. The "3X" play symbol will only appear as dictated by the prize structure.

K. Non-winning prize symbols will never be the same as the winning prize symbol(s).

L. The top prize (\$30,000) will appear on every ticket unless otherwise restricted.

M. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e., 5 and \$5).

### 2.3 Procedure for Claiming Prizes.

A. To claim a "MONEY TRIPLER" Instant Game prize of \$3.00, \$6.00, \$9.00, \$15.00, \$18.00, \$24.00, \$30.00, \$60.00, \$90.00 or \$300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$60.00, \$90.00 or \$300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MONEY TRIPLER" Instant Game prize of \$3,000 or \$30,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MONEY TRIPLER" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

- B. if there is any question regarding the identity of the claimant;

- C. if there is any question regarding the validity of the ticket presented for payment; or

- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "MONEY TRIPLER" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "MONEY TRIPLER" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game

ticket may continue to be sold even when all the top prizes have been claimed.

### 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the

ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 1332. The approximate number and value of prizes in the game are as follows:

**Figure 2: GAME NO. 1332 - 4.0**

<b>Prize Amount</b>	<b>Approximate Number of Winners*</b>	<b>Approximate Odds are 1 in**</b>
<b>\$3</b>	<b>384,000</b>	<b>15.63</b>
<b>\$6</b>	<b>528,000</b>	<b>11.36</b>
<b>\$9</b>	<b>156,000</b>	<b>38.46</b>
<b>\$15</b>	<b>36,000</b>	<b>166.67</b>
<b>\$18</b>	<b>60,000</b>	<b>100.00</b>
<b>\$24</b>	<b>48,000</b>	<b>125.00</b>
<b>\$30</b>	<b>47,300</b>	<b>126.85</b>
<b>\$60</b>	<b>14,000</b>	<b>428.57</b>
<b>\$90</b>	<b>6,500</b>	<b>923.08</b>
<b>\$300</b>	<b>1,000</b>	<b>6,000.00</b>
<b>\$3,000</b>	<b>20</b>	<b>300,000.00</b>
<b>\$30,000</b>	<b>6</b>	<b>1,000,000.00</b>

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.68. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1332 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1332, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201101181

Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: March 24, 2011



## Instant Game Number 1337 "\$100,000 Fortune"

### 1.0 Name and Style of Game.

A. The name of Instant Game No. 1337 is "\$100,000 FORTUNE". The play style is "key number match with auto win".

#### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1337 shall be \$5.00 per ticket.

#### 1.2 Definitions in Instant Game No. 1337.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, MONEY BAG SYMBOL, WIN ALL SYMBOL, ARMORED CAR SYMBOL, STACK OF BILLS SYMBOL, COIN SYMBOL, POT OF

GOLD SYMBOL, SAFE SYMBOL, BANK SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$40.00, \$50.00, \$100, \$500, \$2,000 or \$100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1337 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
MONEY BAG SYMBOL	MBAG
WIN ALL SYMBOL	WINALL
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY

<b>\$40.00</b>	<b>FORTY</b>
<b>\$50.00</b>	<b>FIFTY</b>
<b>\$100</b>	<b>ONE HUND</b>
<b>\$500</b>	<b>FIV HUND</b>
<b>\$2,000</b>	<b>TWO THOU</b>
<b>\$100,000</b>	<b>HUNTHOU</b>
<b>ARMORED CAR SYMBOL</b>	<b>ARM CAR</b>
<b>STACK OF BILLS SYMBOL</b>	<b>BILLS</b>
<b>COIN SYMBOL</b>	<b>COIN</b>
<b>POT OF GOLD SYMBOL</b>	<b>GOLD</b>
<b>SAFE SYMBOL</b>	<b>SAFE</b>
<b>BANK SYMBOL</b>	<b>BANK</b>

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$2,000 or \$100,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1337), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1337-0000001-001.

K. Pack - A pack of "\$100,000 FORTUNE" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "\$100,000 FORTUNE" Instant Game No. 1337 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "\$100,000 FORTUNE" Instant Game is determined once the latex on the ticket is scratched off to expose 46 (forty-six) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins the PRIZE for that number. If a player reveals a "MONEY BAG" play

symbol, the player wins the PRIZE for that symbol instantly. If a player reveals a "WIN ALL" play symbol, the player WINS ALL 20 PRIZES! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 46 (forty-six) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 46 (forty-six) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 46 (forty-six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 46 (forty-six) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. Players can win up to twenty-one (21) times on a ticket in accordance with the approved prize structure.

B. No ticket will have identical "WINNING NUMBERS" play symbols.

C. Non-winning tickets will contain all different "YOUR NUMBERS" play symbols.

D. On winning tickets, non-winning play symbols will all be different.

E. Non-winning tickets will never contain more than three (3) identical prize symbols.

F. On winning tickets, non-winning prize symbols will never appear more than three (3) times.

G. The "MONEY BAG" or "WIN ALL" play symbols will never appear in the "WINNING NUMBERS" play symbol spots.

H. The "WIN ALL" play symbol will only appear as dictated by the prize structure.

I. Non-winning prize symbols will never be the same as the winning prize symbol(s).

J. The top prize symbol (\$100,000) will appear on every ticket unless otherwise restricted.

K. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" play symbol (i.e., 5 and \$5).

L. The "MONEY BAG" play symbol and "WIN ALL" play symbol will never appear on the same ticket.

M. When the "WIN ALL" play symbol appears there will be no matching "WINNING NUMBERS" or "YOUR NUMBERS" play symbols on a ticket.

N. FAST \$100: The "COIN" bonus symbol will only be used as dictated by the prize structure.

O. FAST \$100: Bonus play symbols will not appear in the main play area.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "\$100,000 FORTUNE" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$100,000 FORTUNE" Instant Game prize of \$2,000, or \$100,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "\$100,000 FORTUNE" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.



E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "\$100,000 FORTUNE" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "\$100,000 FORTUNE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not

claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 1337. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1337 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	720,000	8.33
\$10	480,000	12.50
\$15	240,000	25.00
\$20	160,000	37.50
\$50	62,600	95.85
\$100	9,000	666.67
\$500	1,000	6,000.00
\$2,000	85	70,588.24
\$100,000	5	1,200,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.59. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1337 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1337, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201101185  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: March 25, 2011

## **Plateau Water Planning Group**

### **Notice of Application for Regional Water Planning Grant Funding**

Notice is hereby given that the Plateau Regional Water Planning Group (Region J) will submit by 5:00 p.m. April 8, 2011, a grant application for financial assistance to the Texas Water Development Board (TWDB) on behalf of Region J, to carry out planning activities to develop the 2016 Region J Regional Water Plan as part of the state's Fourth Cycle (2012-2016) of Regional Water Planning. It is anticipated that the application will be considered by the Texas Water Development Board at its May 19, 2011 meeting.

The Plateau Regional Water Planning Group (Region J) includes the following counties: Bandera, Edwards, Kerr, Kinney, Real and Val Verde.

Copies of the grant application may be obtained from Upper Guadalupe River Authority when it becomes available or online at [www.ugra.org](http://www.ugra.org). Written comments from the public regarding the grant application must be submitted to Plateau Water Planning Group and TWDB prior to TWDB Board action on this application (May 19, 2011). Comments can be submitted to Plateau Water Planning Group and the TWDB as follows:

#### **Plateau Water Planning Group**

Jonathan Letz, Chairman  
c/o Plateau Water Planning Group, Region J  
700 Main Street, Suite 101  
Kerrville, Texas 78028

or

#### **Texas Water Development Board**

Executive Administrator  
P.O. Box 13231  
Austin, Texas 78711-3231

For additional information, please contact Jonathan Letz, Chairman, c/o Region J; 700 Main Street, Suite 101, Kerrville, Texas 78028; (830) 792-2216; [jletz@co.kerr.tx.us](mailto:jletz@co.kerr.tx.us).

TRD-201101183  
Jonathan Letz  
Chairman  
Plateau Water Planning Group  
Filed: March 25, 2011

## **Public Utility Commission of Texas**

### **Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority**

The Public Utility Commission of Texas received an application on March 24, 2011, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable for Amendment to a State-Issued Certificate of Franchise Authority, Project Number 39269.

The requested amendment is to expand the service area footprint to include the municipalities of Alamo and Palmview, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) 1-800-735-2989. All inquiries should reference Project Number 39269.

TRD-201101220  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 28, 2011

### **Notice of Application for a Service Provider Certificate of Operating Authority**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 29, 2011, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of The Concentric3 Group, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 39280.

Applicant intends to provide resale-only telecommunications services.

Applicant's requested SPCOA geographic area comprises the Local Access Transport Areas served by all Incumbent Local Exchange Carriers, except the Bryan Statistical Metropolitan Area, within the State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 15, 2011. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 39280.

TRD-201101246

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 30, 2011

◆ ◆ ◆  
**Notice of Application for Service Area Exception**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 24, 2011, for an amendment to certificated service area for a service area exception within Sherman County, Texas.

Docket Style and Number: Application of Southwestern Public Service Company to Amend a Certificate of Convenience and Necessity for Electric Service Area Exception within Sherman County. Docket Number 39273.

The Application: Southwestern Public Service Company (SPS) filed an application for a service area boundary exception to allow SPS to provide service to a specific customer located within the certificated service area of Rita Blanca Electric Cooperative, Inc. (RBEC). RBEC has provided a letter of concurrence for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than April 18, 2011 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 39273.

TRD-201101221  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 28, 2011

◆ ◆ ◆  
**Red River Authority of Texas**

**Notice of Application for Regional Water Planning Grant Funding**

Notice is hereby given that the Red River Authority of Texas will submit by 5:00 p.m., April 8, 2011, a grant application for financial assistance to the Texas Water Development Board (TWDB) on behalf of Regional Water Planning Group - Area B, to carry out planning activities to develop the 2016 Region B Regional Water Plan as part of the State's Fourth Cycle (2012-2016) of Regional Water Planning.

The Regional Water Planning Group - Area B includes the following Texas counties: Archer, Baylor, Clay, Cottle, Foard, Hardeman, King, Montague, Wichita, Wilbarger, and the portion of Young County that encompasses the City of Olney.

Copies of the grant application may be obtained from Red River Authority of Texas when it becomes available or online at [www.rra.dst.tx.us](http://www.rra.dst.tx.us). Written comments from the public regarding the grant application must be submitted to the Red River Authority of Texas and the TWDB by no later than 5:00 p.m., Monday, May 2, 2011. Comments can be submitted to Red River Authority of Texas and the TWDB as follows:

**Red River Authority of Texas**

Mr. Curtis W. Campbell  
Administrative Agent for Region B

P.O. Box 240  
Wichita Falls, Texas 76307-0240

or

**Texas Water Development Board**

Executive Administrator

P.O. Box 13231,  
Austin, Texas 78711-3231

For additional information, please contact Mr. Curtis W. Campbell, Red River Authority of Texas, P.O. Box 240, Wichita Falls, Texas 76307-0240, [ccampbell@rra.dst.tx.us](mailto:ccampbell@rra.dst.tx.us).

TRD-201101188  
Curtis W. Campbell  
General Manager  
Red River Authority of Texas  
Filed: March 28, 2011

◆ ◆ ◆  
**Notice of Public Meeting**

Notice is hereby given that the Regional Water Planning Group - Area B is seeking input from the public on the scope of planning activities to be considered during the Fourth Cycle of Regional Water Planning.

The public meeting will be held in conjunction with the Region B Planning Group Meeting, to be held Wednesday, May 18, 2011 at 10:00 a.m., at the Red River Authority of Texas Administrative Office, 3000 Hammon Road, Wichita Falls, Texas. Written and oral comments (not to exceed five (5) minutes per speaker) regarding the scope of activities to be considered during the Fourth Cycle of Regional Water Planning will be accepted at this meeting.

The Regional Water Planning Group - Area B includes the following Texas counties: Archer, Baylor, Clay, Cottle, Foard, Hardeman, King, Montague, Wichita, Wilbarger, and the portion of Young County that encompasses the City of Olney.

For additional information, please contact Mr. Curtis W. Campbell, Red River Authority of Texas, P.O. Box 240, Wichita Falls, Texas 76307-0240, [ccampbell@rra.dst.tx.us](mailto:ccampbell@rra.dst.tx.us).

TRD-201101189  
Curtis W. Campbell  
General Manager  
Red River Authority of Texas  
Filed: March 28, 2011

◆ ◆ ◆  
**Region C Regional Water Planning Group**

**Notice of Application for Regional Water Planning Grant Funding**

Notice is hereby given that the North Texas Municipal Water District (NTMWD) will submit by 5:00 p.m., April 8, 2011, a grant application for financial assistance to the Texas Water Development Board (TWDB) on behalf of Region C Water Planning Group (RCWPG) to carry out planning activities to develop the 2016 Region C Regional Water Plan as part of the state's Fourth Cycle (2012-2016) of Regional Water Planning. It is anticipated that the application will be considered by the TWDB at its June 22, 2011, meeting.

The RCWPG area includes all or part of the following counties: Collin, Cooke, Dallas, Denton, Ellis, Fannin, Freestone, Grayson, Henderson, Jack, Kaufman, Navarro, Parker, Rockwall, Tarrant, and Wise.

Copies of the grant application may be obtained from NTMWD when it becomes available or online at [www.regioncwater.org](http://www.regioncwater.org). Written comments from the public regarding the grant application must be submitted to NTMWD and TWDB prior to TWDB Board action on this application (date stated above). Comments can be submitted to NTMWD and the TWDB as follows:

#### **North Texas Municipal Water District**

James M. Parks, Chairman

Administrative Agent for Region C

P.O. Box 2408

Wylie, Texas 75098

or

#### **Texas Water Development Board**

Executive Administrator

P.O. Box 13231

Austin, Texas 78711-3231

For additional information, please contact Jim Parks, RCWPG, c/o NTMWD, P.O. Box 2408, Wylie, Texas 75098; telephone: (972) 442-5405; or e-mail: [jparks@ntmwd.com](mailto:jparks@ntmwd.com).

TRD-201101172

Jim Parks

Chairman

Region C Regional Water Planning Group

Filed: March 23, 2011



#### **Rio Grande Council of Governments**

##### **Notice of Application for Regional Water Planning Grant Funding**

Notice is hereby given that the Rio Grande Council of Governments (RGCOG) will submit on or before April 8, 2011, a grant application for financial assistance to the Texas Water Development Board (TWDB) on behalf of Region E, to carry out planning activities to develop the 2016 Far West Texas Water Plan as part of the state's Fourth Cycle (2012-2016) of Regional Water Planning. It is anticipated that the application will be considered by the Texas Water Development Board at its June 22, 2011 meeting.

The Far West Texas Water Planning Group (Region E) includes all portions of Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Presidio, and Terrell counties.

Copies of the grant application may be obtained from RGCOG when it becomes available or online at [www.riocog.org](http://www.riocog.org). Written comments from the public regarding the grant application must be submitted to RGCOG and TWDB prior to TWDB Board action on this application (June 22, 2011). Comments can be submitted to RGCOG and the TWDB as follows:

#### **Rio Grande Council of Governments**

Annette Gutierrez

Administrative Agent for Region E

Executive Director

1100 N. Stanton, Suite 610

El Paso, Texas 79902

or

#### **Texas Water Development Board**

Melanie Callahan

Interim Executive Administrator

P.O. Box 13231

Austin, Texas 78711-3231

For additional information, please contact Michael Ada, Rio Grande Council of Governments, [michaela@riocog.org](mailto:michaela@riocog.org), (915) 533-0998.

TRD-201101173

Annette Gutierrez

Executive Director

Rio Grande Council of Governments

Filed: March 24, 2011



#### **Notice of Public Meeting**

Notice is hereby given that the Far West Texas Water Planning Group (Region E) is seeking input from the public on the scope of planning activities to be considered during the Fourth Cycle of Regional Water Planning.

The public meeting will be held in conjunction with a regular Region E Planning Group meeting, to be held at the Van Horn Convention Center, Van Horn, Texas, at 10:00 a.m. on Thursday, June 16, 2011. Written and oral comments (not to exceed five (5) minutes per speaker) regarding the scope of activities to be considered during the Fourth Cycle of Regional Water Planning will be accepted at this meeting.

The Far West Texas Water Planning Group (Region E) includes all portions of Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Presidio, and Terrell counties.

For additional information, please contact Annette Gutierrez, Executive Director and FWTWPG Administrative Agent, Rio Grande Council of Governments, c/o Region E; 1100 N. Stanton, Suite 610, El Paso, Texas 79902; (915) 533-0998, [annetteg@riocog.org](mailto:annetteg@riocog.org).

TRD-201101177

Annette Gutierrez

Executive Director

Rio Grande Council of Governments

Filed: March 24, 2011



#### **Texas Department of Transportation**

##### **Aviation Division - Request for Proposal for Professional Engineering Services**

The City of Burnet, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Burnet Municipal Airport - Kate Craddock Field during the course of the next five years through multiple grants.

**Current Scope of Work:** City of Burnet. TxDOT CSJ No.: 1114BR-NET. Current scope: Provide engineering/design services to evaluate the condition and capacity of the existing airport drainage system, to evaluate on-site and off-site detention, and to study the drainage impacts of future airport development at Burnet Municipal Airport - Kate Craddock Field.

The DBE goal for the current project is 10%. The TxDOT Project Manager is Ed Mayle.

Future scope work items for engineering/design services within the next five years may include the following:

1. Terminal apron expansion and fuel farm relocation
2. Install/remove fencing and install security gates
3. Repair, overlay, and mark Runway 1-19
4. Replace medium intensity runway edge lights
5. Reconstruct/relocate Taxiway and connecting stubs
6. Clear threshold siting surface obstructions
7. Expand and rehabilitate aprons
8. Rehabilitate hangar access Taxiways
9. Road relocation
10. Relocate entrance road and auto parking

The City of Burnet reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing, project narrative, and most recent Airport Layout Plan are available online at [www.txdot.gov/avn/avninfo/notice/consult/index.htm](http://www.txdot.gov/avn/avninfo/notice/consult/index.htm) by selecting "Burnet Kate Craddock Field." The proposal should address a technical approach for the **current scope only**. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at <http://www.txdot.gov/business/projects/aviation.htm>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. **PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.**

**ATTENTION:** To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

**Please note:**

**Five** completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than **May 3, 2011 by 4:00**

**p.m.** Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of **Beverly Longfellow**.

The consultant selection committee will be composed of TxDOT Aviation Division staff members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluation of engineering proposals can be found at <http://www.txdot.gov/business/projects/aviation.htm>. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Beverly Longfellow, Grant Manager at ext. 4516. For technical questions, please contact Ed Mayle, Project Manager at ext. 4528.

TRD-201101231

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: March 30, 2011



### Notice of Request for Competing Proposals for Lease of Texas Department of Transportation-Owned Right of Way to Implement Low-Emission Freight Transportation Facilities

The Texas Department of Transportation (department) issues this Request for Proposals (RFP) to solicit proposals from public and private sector entities to lease existing department-owned right of way from the department on which the entity would implement a Low Emission Freight Transportation Facility (or Facilities) (LEFTF) without the department's financial support. Pursuant to Transportation Code, §202.052 the department may lease part of a right of way that is part of the state highway system if the department determines that the interest to be leased will not be needed for a highway purpose during the term of the lease. The Texas Transportation Commission has promulgated rules located at Texas Administrative Code, Title 43, Chapter 21, Subchapter J establishing the procedure to be used for leasing state-owned right of way for freight movement to reduce congestion on the state highway system and to improve air quality. The issuance of this RFP is intended to solicit proposals for the department's consideration and will not bind or commit the department to proceed with a lease agreement whatsoever.

**Purpose:** Traffic forecasting and demand modeling predictions for Texas indicate that freight traffic in the state will expand significantly in the future. At the same time, there is growing concern over the impact of car and truck emissions on the environment. The department is considering leasing right-of-way for the development and operation of LEFTF as a viable and sustainable alternative solution to manage the expected increase in freight movement across the state.

**To Obtain a Copy of the RFP:** Requests for a copy of the RFP should be submitted to Roger Beall, P.E., Advanced Project Development Director, Texas Turnpike Authority Division, Texas Department of Transportation, 7600 Chevy Chase Drive, Building 2, Suite 400, Austin, Texas 78752; telephone: (512) 904-1636; email: [Roger.Beall@txdot.gov](mailto:Roger.Beall@txdot.gov). The RFP is also available on the following website: [http://www.txdot.gov/business/freight\\_rfp.htm](http://www.txdot.gov/business/freight_rfp.htm).

**Proposal Submission Deadline:** October 3, 2011 3:00 p.m.

**Additional Information:** You may contact Roger Beall, P.E. at (512) 904-1636 for additional information.

TRD-201101233

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: March 30, 2011



#### Public Hearing Notice - 2012 Unified Transportation Program

The Texas Transportation Commission (commission) will hold a public hearing on Thursday, April 28, 2011, at 9:00 a.m., in the Ric Williamson Hearing Room of the DeWitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas to receive public comments on the 2012 Unified Transportation Program (UTP).

The UTP is a 10-year program that guides the development and authorizes construction of transportation projects and projects involving aviation, public transportation, and the state's waterways and coastal waters. The commission has adopted rules located in Texas Administrative Code, Title 43, Chapter 16, governing the planning and development of transportation projects, which include guidance regarding public involvement related to the development of the UTP.

Any interested person may appear at the hearing and offer comments or testimony, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the commission as may be necessary to ensure a complete record. While any person with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the commission reserves the right to restrict testimony in terms of time or repetitive content. A person may not assign a portion of his or her time to another speaker. Organizations, associations, or groups are encouraged to present their commonly-held views, and same or similar comments, through a representative member where possible. Presentations must remain pertinent to the subject matter of the hearing.

Persons with disabilities who plan to attend the hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Brent Dollar, Government and Public Affairs Division, at 125 East 11th Street, Austin, Texas 78701-2383, or (512) 463-8955 at least two working days prior to the hearing so that appropriate arrangements can be made. Every reasonable effort will be made to accommodate the needs.

Information regarding the 2012 UTP will be available at the department's Finance Division, 150 East Riverside Drive, Austin, Texas 78704, or (512) 486-5043, at each of the department's districts, and on the department's web site at: [http://www.txdot.gov/business/governments/unified\\_transportation.htm](http://www.txdot.gov/business/governments/unified_transportation.htm).

Interested parties who are unable to attend the hearing may submit written comments to the Texas Department of Transportation, Attention: Brian Ragland, P.O. Box 149217, Austin, Texas 78714-9217. The deadline for receipt of written comments is 5:00 p.m. on May 9, 2011.

TRD-201101232

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: March 30, 2011



#### Texas A&M University System

##### Notice of Award of a Consulting Contract

In accordance with the provisions of Texas Government Code, Chapter 2254, Texas A&M University has entered into a consulting contract for consultant firm to assist in defining and developing a strategic research based vision and implementation plan to transform the Texas A&M University Research Park into a catalyst for research and commercialization activity at Texas A&M University and for economic development in the Research Valley and the State of Texas.

The Name and Address of Consultant is as follows: Eva Klein & Associates Ltd, 503 Seneca Road, Great Falls, Virginia 22066.

The Request for Proposals articulated a project in three phases. Phase I is being awarded at this time, with the option to proceed with Phase II and/or Phase III, depending on the outcomes of Phase I. The estimated amount of Phase I is \$168,795. The contract will begin on February 16, 2011 and continue for twelve months unless otherwise terminated in accordance with the terms of this agreement. Any extension must be by mutual agreement of the parties.

Deliverables will be a comprehensive document report, with text, data tables, and graphics, all geared to suit the content, along with a summary/presentation version compiled by the consultant under the contract to Texas A&M University, to be submitted at completion of Phase I. Timeframe is estimated to be 3 - 4 months.

Any questions regarding this posting should be directed to: Pam Pantel, Senior Buyer, Department of Procurement Services, Texas A&M University, College Station, Texas 77843; telephone: (979) 845-4505; e-mail: [ppantel@tamu.edu](mailto:ppantel@tamu.edu).

TRD-201101186

Don Barwick

HUB and Procurement Manager

Texas A&M University System

Filed: March 28, 2011



### How to Use the Texas Register

**Information Available:** The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 36 (2011) is cited as follows: 36 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document

format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

### Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

### TITLE 1. ADMINISTRATION

#### Part 4. Office of the Secretary of State

#### Chapter 91. Texas Register

40 TAC §3.704.....950 (P)